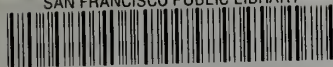


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HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 17, 2005
1:35 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, AUGUST 17, 2005

16 1:35 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

WILLIAM KEMPTON, Director
Department of Transportation

CARL GUARDINO
Silicon Valley Leadership Group

SARAH WEST
Self-Help Counties Coalition

ROBERT BALGENORTH
State Building Trades

STEPHANIE WILLIAMS
California Trucking Association

ROBERT BALGENORTH
State Building Trades

1 DEANN BAKER
California State Association of Counties

2 D.J. SMITH
3 Smith, Kempton & Watts

4 TONY GRASSO
5 Associated General Contractors of California

6 ERIC HALEY, Executive Director
7 Riverside County Transportation Commission

8 J. KEVIN PEDROTTI
Engineering and Utility Contractors Association

9 ETHAN VENEKLASEN, Deputy Director
10 Contra Costa Council

11 GARY L. GALLEGOS, Executive Director
12 San Diego Association of Governments (SANDAG)

13 JOSEPH CRUZ
14 California Alliance for Jobs

15 PAUL MEYER
Consulting Engineers and Land Surveyors Of California

16 KURT EVANS
17 Santa Clara Valley Transportation Authority

18 BOB McCLEARY
19 Contra Costa Transportation Authority

20 DON HANSEN
Ex-Employee

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CHAIRMAN PERATA: The Senate Rules Committee will come to order.

Our one and only Required to Appear today, nominee or appointee, is Will Kempton, the Director of the Department of Transportation.

Welcome. Come forward.

I notice we didn't put down Caltrans. You thought you'd disguise this as the Department of Transportation.

Welcome, sir.

MR. KEMPTON: Thank you, Mr. Chairman and Members of the Committee. Will Kempton, Director of the California Department of Transportation.

I really do appreciate the opportunity to appear before you today.

And Senator Perata, I wanted to thank you personally for your courtesy in adjourning the Senate earlier this week in the honor of my mother who died during your summer break. I wanted to thank you for that.

Again, I am truly honored to have been chosen by Governor Schwarzenegger to be the Caltrans Director. In hopes that you wouldn't be too rough with me today, I did bring my wife, Beverly, and I'd like to introduce her in the back.

CHAIRMAN PERATA: Most people do it at the end.

[Laughter.]

CHAIRMAN PERATA: You're a veteran; aren't you?

MR. KEMPTON: I want to make sure I'm protected.

1 I know this is a big job with lots of challenges,
2 but for me, really, there are no surprises. You all know my
3 work history. You know that I come to this position with more
4 than 30 years of experience in transportation. And I feel like
5 I've trained all my life for this job.

6 So again, in spite of the challenges, I feel
7 competent to serve in this position and am anxious to move
8 forward in the next couple of years to improve transportation in
9 California.

10 I had a meeting earlier with Senator Ashburn.
11 And Senator, you said that challenges translate into
12 opportunity. So, I look at this position in that very same way,
13 that the challenges that are presented by the position will in
14 fact provide many opportunities to make a substantial
15 improvement in the way we do business in this program.

16 I think the outlook for California's
17 transportation system is looking up, in part thanks to the full
18 funding of Proposition 42 that was proposed by the Governor and
19 approved by the Legislature. I think that's a very good thing
20 for transportation. I'm pleased to have been in this position
21 when that occurred, and I look forward to putting all of those
22 dollars to very good use.

23 I have committed to the Governor, as a matter of
24 fact, that we will put \$4.2 billion of highway and
25 transportation projects out on the streets during this fiscal
26 year. That assumes, of course, that we get some of the Indian
27 gaming revenues that we're anticipating at the end of the year,
28 but that is a large amount of transportation projects, and in

1 fact, will set a record. I would expect that if we are
2 successful, and I intend to be successful in delivering that
3 amount of the project work, that we will see over \$10 billion
4 worth of construction activity going on in California at the end
5 of this fiscal year.

6 We've got a big challenge in that as well in
7 terms of growing the industry. We're already working with the
8 construction industry to bring people back to California to work
9 on all of these projects.

10 And we cannot achieve this significant level of
11 service without changes at the Department of Transportation. We
12 have a large organization with over 20,000 employees. In many
13 locations in California, we are the state government.

14 So, one of my primary objectives in accepting
15 this position is to earn back the trust that Caltrans is, in
16 fact, a careful steward of our transportation resources. And to
17 do this, we cannot proceed with business as usual. So, I have
18 three things that I tell my employees. We have to be better
19 partners; we have to be more efficient; and we have to be good
20 at customer service.

21 And I mean we must be true partners. Caltrans
22 does not have a good reputation for being good partners in the
23 past, and I want to change that. We need to work very closely
24 with the stakeholders that are involved in transportation -- the
25 cities, the counties, the metropolitan planning organizations,
26 the regional transportation planning agencies -- and we need to
27 establish the fact that are we are indeed good partners.

28 We have to be more efficient. That goes without

1 saying, and I am moving aggressively to implement efficiencies
2 throughout the department's operations. In fact, I have already
3 achieved about \$50 million in efficiencies annually that will
4 translate to a quarter of a billion dollars being available to
5 add to the programmable resources of the department and the
6 program over the next five years.

7 We have to figure out ways to be better at
8 customer service. My motto, and the motto I try to instill in
9 my employees, is to find a way to say yes. We have to be
10 careful about safety issues. We can't respond favorably to the
11 details of every specific request, but we can be helpful. We
12 can be responsive to the customers. So, that's the motto that I
13 use to instill that in our employees. And the more that we can
14 say yes and be more responsive, the better the image of the
15 department will be.

16 I am optimistic. In my short time at Caltrans,
17 I'm happy to say with the help of the legislative leadership and
18 the Governor's Office, we have the Bay Bridge back on track.
19 The department is more efficient and more responsive. We've
20 turned around our correspondence response time from what was
21 about 60 days per letter to no more than 15 working days. We've
22 increased the -- or decreased the time that it takes to enter
23 into contracts from 198 working days to 60 working days, and
24 we're making other similar improvements across the board.

25 Our legislative reports are in on time, and we
26 will be providing information to the Legislature that you need
27 to have as you proceed with your policy making for the people of
28 the State of California.

1 I'm getting positive reactions from my staff. I
2 think we have good people at Caltrans. I think they've been
3 hungry for the kinds of objectives that we've set. As a matter
4 of fact, when I signed contracts with all of my district
5 directors to deliver the amount of program work that I cited at
6 the start of my conversation today, they were happy about it.
7 They said we've needed this. We need the challenge; we need to
8 be put on the spot to deliver. And I believe they will deliver,
9 and I intend to hold them accountable if they do not.

10 We are looking forward to working with the
11 Legislature on transportation issues, specifically as we come to
12 the end of the first half of this session. The Go California
13 Initiative, as you know -- design build, design sequencing, and
14 public-private partnerships are important to this administration
15 in terms of proceeding with our transportation program. And I
16 hope that I can work cooperatively with Members of the
17 Legislature to succeed in delivering on those pieces of
18 legislation.

19 The job of Caltrans Director is not easy, and I
20 perhaps more than anyone else know that, coming in with the
21 amount of experience that I've had in the transportation
22 program. I do think I'm up to the challenge, and I am excited
23 about the opportunity to work on behalf of the people of
24 California to deliver a better transportation system and an
25 improved transportation program.

26 So I want to thank you for inviting me to appear
27 before you today, and I would be happy to answer any questions.

28 CHAIRMAN PERATA: Thank you.

1 Questions by Members? We'll start at your end,
2 Gil.

3 SENATOR CEDILLO: I appreciate your efforts. The
4 first time I saw you was dealing with the Bay Bridge. I
5 appreciate any time somebody sits in the hot seat and has to
6 take the rocks.

7 We had a great meeting. I just want to restate
8 some of the issues that I'm very interested in. Obviously, like
9 I said, I would love to work with you on the extension of the
10 710 extension, between the 10 and the 210. We will look forward
11 to working with you.

12 I appreciate your willingness to provide us with
13 some road map. I actually have some demands on me, so I really
14 would like to see that sooner than later, only for the purposes
15 of political support that we'll need for that.

16 I think that's it.

17 CHAIRMAN PERATA: Thank you.

18 He's from the desert, so he has some questions
19 for you.

20 SENATOR BATTIN: I really don't.

21 Mr. Kempton is very qualified. I think he will
22 do a great job. And frankly, if Joe Tavaloni says you'll do a
23 good job, then that's good enough for me.

24 I'll move the confirmation.

25 CHAIRMAN PERATA: Debra.

26 SENATOR BOWEN: Just a couple of questions,
27 probably a couple of things that other people won't focus on.

28 The Legislative Analyst historically has had some

1 concerns about Caltrans decentralized information technology
2 systems or structure. I wouldn't call it a system. Apparently
3 there are various places where similar goals are being addressed
4 in different departments via attempts to develop proprietary
5 software, and there's really no overall structure for
6 determining how a particular information technology project is
7 going to be deployed, who's responsible, and how it coordinates
8 with other systems.

9 The LAO has said that the result is lack of
10 economy of scale due to development of customized software
11 instead of department-wide systems, duplication of staff effort,
12 et cetera, et cetera.

13 Have you had any opportunity to take a look at
14 the IT systems at Caltrans, or to think about how you might pull
15 that into some kind of a cohesive structure?

16 MR. KEMPTON: Well, first of all, I think we have
17 one of the most effective IT operations in state government.
18 And that operation has just recently been enhanced by the
19 appointment of Ann Barsotti, who brings with her experience from
20 the Teale Data Center as well as the Department of Motor
21 Vehicles on IT issues. So, I'm very, very pleased with our new
22 management in that department.

23 I think that certainly there are some cumbersome
24 aspects of the approval process for implementing new computer
25 programs -- the requirements for feasibility studies, et
26 cetera. I understand the need for them certainly in terms of
27 the justification that's required for implementing those
28 systems.

1 But I am not aware of the fact that we are not
2 providing appropriate information on our IT operations to the
3 Legislature.

4 SENATOR BOWEN: No, that's not my question. The
5 LAO's Office critique of Caltrans IT structure indicates that
6 there's a duplication of staff effort due to the lack of
7 definition of who is responsible for implementing standards and
8 providing services; lack of standardization of IT
9 software/hardware due to decentralized development of IT
10 projects; duplicate efforts to achieve the same goals, for
11 example, multiple systems to collect data on employee time
12 expenditure; lack of economy of scale due to development of
13 customized software instead of department-wide solutions; lack
14 of coordination and communication among IT staff; poor customer
15 service to the department's individual programs.

16 That doesn't sound to me like an excellent IT
17 operation.

18 MR. KEMPTON: I would, again, not to be overly
19 defensive of the department in this regard, but we are contacted
20 on a regular basis to perform complex IT functions by other
21 aspects or other operations in state government.

22 But we are engaged in an IT consolidation process
23 that I think is going to address many of those issues that
24 you've talked about.

25 Yes, our districts have in the past operated in
26 some respects like fiefdoms, and I can understand where that may
27 have occurred in the past.

28 I think with our IT consolidation efforts, you're

1 going to see a substantial improvement in that.

2 And again, while I'm not aware of those specific
3 concerns of the Legislative Analyst, now that you've brought
4 those to my attention, I certainly will be happy to work with
5 the folks at the Legislative Analyst's Office to make sure
6 they're satisfied that we are, in fact, moving away from the
7 piecemeal approach, and that our IT consolidation efforts are
8 effective.

9 SENATOR BOWEN: There also is some concern about
10 the automation of data collection and data analysis functions.
11 It sounds like you must have done some work if you've gotten
12 some of the permit turn-around time reduced significantly as you
13 have. But because the multiple phases of a project require such
14 a detailed kind of tracking, you have a challenge that's not the
15 same as many other agencies face.

16 MR. KEMPTON: I would agree with you, Senator.
17 In fact, we will be coming to the Legislature this year to look
18 at implementing two new electronic programs, both for
19 construction management and for our accounting system. I can
20 tell you that our accounting system is not responsive to our
21 needs; it doesn't effectively support project management in the
22 department, and we do need to make changes in that area. So,
23 we're going to be approaching you this budget year to remedy
24 that situation.

25 SENATOR BOWEN: All right.

26 My only other question is based on the kind of
27 concerns that I know all of us get from constituents.

28 Most recently in my district office, there were a

1 number of calls because Highway 1, which is Lincoln Boulevard in
2 Venice in the marina area was beginning to undergo construction.
3 It was coned off, and then nothing happened for three weeks.
4 And apparently I'm told that it was because of the discovery of
5 unanticipated utility lines.

6 But I think my concern, when I look back at it
7 was, well if you discovered something and you couldn't do work,
8 why not open the lanes up again until you could work?

9 How do those decisions get made? Is there a
10 policy about time of closure, what happens if there are delays,
11 reopening? I'm sure there is.

12 MR. KEMPTON: Usually they're actually
13 construction items, and that's probably what happened here, is
14 that the contract was let, so the contractor was in control of
15 the site.

16 But that's no excuse. I agree with you. If we
17 have to delay the work, there's certainly no reason why we can't
18 get the roadway opened back up until we're actually out there on
19 site.

20 It's actually a fairly common complaint that I
21 get, not just with respect to construction, but in terms of our
22 ongoing maintenance activities on the roadway, where we'll
23 actually cone the road off, and people will drive by, and
24 there's no activity.

25 We're doing a complete review of our construction
26 traffic control operations because we've got to do a better job
27 of not only incident management when an accident occurs. I was
28 personally caught in a very long delay that resulted in a 15-

1 mile queue on Interstate 80 heading into San Francisco about
2 four or five weeks ago, and actually headed down to the signing
3 of the Bay Bridge legislation.

4 [Laughter.]

5 MR. KEMPTON: That would not have been good not
6 to be there.

7 We're not clearing the road --

8 SENATOR BOWEN: Life is funny that way sometimes.

9 MR. KEMPTON: We're not clearing the roads as
10 quickly as we need to, and that's going to involve working with
11 local agencies and with the California Highway Patrol to better
12 manage incident responses.

13 But internally to our operation, I think we need
14 to do a better job in terms of the traffic control that's
15 implemented on the roadways.

16 It's also an issue relative to bid prices,
17 because if we put too much of a restriction on traffic
18 operations, that drives the cost of the bid up. We clearly need
19 to keep traffic moving, so there's a balance that's involved in
20 there.

21 But this is an issue that I'm keenly aware of,
22 and we are, as I indicated, looking to see what improvements we
23 can put in place.

24 SENATOR BOWEN: I think Californians understand
25 the need to have closures and lane reductions, and the need for
26 maintenance, the need for capital improvements. But as you
27 said, there is a frustration level when people are driving by
28 coned-off lanes at three miles an hour, and there's nothing on

1 the other side of the cones.

2 So, I'm pleased to hear that that's on your short
3 list of things to do. Thank you.

4 SENATOR ASHBURN: Welcome. Congratulations.

5 MR. KEMPTON: Thank you, Senator.

6 SENATOR ASHBURN: Highway 65 is a two-lane
7 highway that runs from Bakersfield to Porterville. There have
8 been so many people killed and injured on that highway that, you
9 know, it's a common occurrence.

10 The identified improvement project was the
11 installation of a one-quarter mile passing lane. The Caltrans
12 estimate to do that project is seven years to add a quarter mile
13 of passing lane. There is no encroachment from any building.
14 It's wide open spaces, agriculture on both sides.

15 Why in the world would it take that much time?
16 And you can substitute Highway 65 for any number of any road in
17 California, and that's what we're facing.

18 MR. KEMPTON: Well, Senator, following our
19 meeting, I am actually looking into why that one-quarter mile
20 stretch of passing lane is taking as long as you've indicated.

21 Clearly, the project development timeframe for
22 major, major projects is significant, and it's primarily the
23 result of the need to go through extensive environmental review,
24 and you can -- you have to deal with community concerns. There
25 may be right-of-way purchase involved, and certainly you have to
26 go through the design and construction timeframe.

27 But for a project that you described, that was
28 surprising to me as well, and I want to get back with you to let

1 you know why that has taken so long.

2 That being said, we need to address the issue of
3 project delivery across the board, not just with the small
4 safety improvements that you're referencing, but for all of the
5 improvements. The longer that we're in construction mode, the
6 more impact on the motoring public. We need to look at ways to
7 improve our actual construction management. As I was indicating
8 to Senator Bowen, that's part of the exercise we have underway
9 now to see how we might be able to shorten that timeframe.

10 But I think the most critical time factor that is
11 involved in project delivery has to do with the environmental
12 process. We have a very rigorous environmental law in
13 California through the California Environmental Quality Act.
14 And yet, because most of our dollars are federal, most of the
15 money that we are spending on transportation projects does
16 include federal dollars, we have the requirement to go through
17 the NEPA process as well. And that does add time, but probably
18 more significantly, it adds additional regulatory agencies into
19 the process.

20 And as I explained to you earlier this week, one
21 of the problems or frustrations I have is that you not only go
22 through the environmental process, identifying the mitigation
23 and getting the approvals, but then there's almost like a second
24 process that you have to go through as you get your permits from
25 those regulatory agencies.

26 We've work out a process that we think is pretty
27 effective in dealing with the California regulatory agencies and
28 elevating issues of contention so that we can get them resolved

1 quickly. We do not have a parallel process like that with the
2 federal agencies, and we are even talking with them, negotiating
3 with them, about providing resources from our folks to be able
4 to help them get their job done, providing the information they
5 need to make decisions, and moving forward as rapidly as we can
6 to mitigate the impacts of those regulatory reviews.

7 It's not a good answer, but I'm acutely aware of
8 that issue. Many of the people in the audience would share your
9 concerns.

10 SENATOR ASHBURN: It actually is the beginning of
11 a good answer, because you come to this position at an historic
12 time. The need has never been greater on transportation
13 projects.

14 The public understands and is highly supportive.
15 The budget reflects a commitment to keep faith with the people
16 on Proposition 42. The federal government, the Congress and the
17 President, have just allocated a vast sum of dollars in a
18 federal transportation bill.

19 Senator Perata has proposed a major
20 transportation funding for California.

21 My suggestion to you is that while the money is
22 important, we have a crisis condition. And so, my question to
23 you is, is the development of a comprehensive strategy, a series
24 of reforms to be implemented in conjunction with this
25 unprecedented amount of dollars to speed the delivery of
26 projects, beginning with CEQA, dealing with the federal agencies
27 in NEPA compliance, the issues of the unbelievable land
28 acquisition process that we have in place in this state. There

1 are so many issues related to the bid process. There are issues
2 related to project labor agreements.

3 You take all of these cumulatively, and what you
4 have is not only gridlock on the highway, you have gridlock in
5 the process for the delivery of the dollars to the projects that
6 will make the roads safer and to give the capacity that the
7 public is screaming for.

8 So my question is, are you going to develop, in
9 your unique capacity and with your unique knowledge, a series of
10 recommendations to the Legislature and the Governor to overhaul
11 and reform the process?

12 MR. KEMPTON: The answer is yes. I, as you
13 pointed out in your comments, I do have a fairly extensive
14 background in project management and project delivery, so I know
15 many of the processes that need to be changed.

16 Right now we are focused internally within the
17 department on the administrative improvements that need to be
18 made, and we are having good success. I cited a couple of those
19 at the outset of the discussion relative to shortening the
20 timeframe for bringing in contracted resources, cooperative
21 agreements and the process that is involved in working with many
22 of our local partners. That process has taken as much as nine
23 months to get a cooperative agreement. We're shortening that to
24 two-month timeframe so that we can approve those processes.

25 There are some legislative improvements that we
26 can propose that will, in fact, accomplish what you're talking
27 about. Some of them we have already put out on the table with
28 respect to design build and design sequencing because those

1 processes will in fact save time in the delivery of projects.

2 And so, we are looking at that very, very
3 closely. It is our -- one of our core functions. And it is
4 very critical that we do the best job that we can in that
5 particular arena.

6 So, I accept your challenge, and you can count on
7 the fact that we have other legislative proposals to the
8 Legislature that will help accelerate project delivery and
9 accomplish the goals that I think you're interested in.

10 SENATOR ASHBURN: Thank you. You're going to do
11 a great job.

12 MR. KEMPTON: Thank you, Senator.

13 CHAIRMAN PERATA: Caltrans has kind of become my
14 hobby.

15 [Laughter.]

16 CHAIRMAN PERATA: It's my answer to Gil's
17 driver's license question. I don't know what we're going to fix
18 first.

19 I just have a couple of general things. First of
20 all, speaking of the Bay Bridge, I want to also compliment you
21 on working together since you've gotten here. I hope that we
22 can maybe see it certainly completed by the time you leave. I
23 don't think you can get it done as fast as '08.

24 But I am concerned just generally with your
25 impressions subsequent to the bill signing of how are things
26 going, and what kind of prognostications do you have for us.

27 MR. KEMPTON: I think you know, Senator, that I
28 welcome the additional oversight that came about as a result of

1 AB 144. I think it's going to be very positive overall to the
2 process, and I think the product that we end up with at the end
3 of the day will be better because of it.

4 So far, we've had an excellent working
5 relationship with the Bay Area Toll Authority and with the
6 California Transportation Commission and the Program Oversight
7 Committee. I felt it was important to attend the first meeting
8 of BATA dealing with some of these issues on the 27th, and I
9 went there and got, I think, genuinely positive feedback as a
10 result of that because I wanted to demonstrate our commitment to
11 working closely with BATA And with the CTC in the oversight
12 process.

13 We've learned a lot from the bridge process. I
14 think many of the recommendations --

15 CHAIRMAN PERATA: Good choice of splinter-isms.

16 MR. KEMPTON: I think that we've -- we've
17 benefitted from some of the recommendations that came out of the
18 Bureau of State Audits' review of the process. We're certainly
19 implementing a much more aggressive risk management process. We
20 have now additional resources through the efforts that will come
21 about as a result of AB 144.

22 But I also want to say from the standpoint of our
23 employees, they've done an excellent job. I'm proud of all of
24 those employees that have worked on the Bay Bridge under very
25 difficult circumstances. This is an extremely complex job, and
26 they're doing excellent work out there. I met with them shortly
27 after the signing of AB 144 to explain that Caltrans is still
28 very much engaged in this project, and we will have a very

1 active role. They have responded accordingly, as I think
2 they've responded throughout this process.

3 We've just recently announced savings over the
4 August 2004 cost projections for the Richmond-San Rafael Bridge,
5 in large part due to the efforts of our people. I hope to have
6 the same kind of process going forward throughout the timeline.

7 And I am looking to deliver that project as soon
8 as we can, and I hope we can improve substantially on the
9 current schedule.

10 So, I think it's gone very positively. I'm
11 committed to working cooperatively with the other agencies. And
12 again, I think by virtue of all of us being involved in the
13 process, it's going to be a better product at the end of the
14 day.

15 CHAIRMAN PERATA: When are the bids due?

16 MR. KEMPTON: The bids are due at the end of
17 January. We advertised the project on August 1st. BATA
18 approved the changes to the bid specifications on July 27th, and
19 the following Monday, which is our normal advertising day, we
20 were out to bid. It's a six-month bidding process. I
21 personally wanted a shorter timeframe for the bid process, but I
22 was convinced by people with more expert experience than myself
23 that the -- we would increase the number of bidders potentially
24 by a longer bid period. So, we went from the four-month bid
25 period to the six-month bid period.

26 I'm comfortable now that that will enhance our
27 ability to attract more interest in the project, and hopefully
28 we'll get the competition that will help drive the price down.

1 CHAIRMAN PERATA: Great.

2 In mentioning the sizeable amount of money you
3 expect to put out on the street in projects by the end of the
4 year, how are you staffed for that in engineering, in all that
5 stuff that goes into it? We never see it, and we can't complain
6 about that because we don't see it; otherwise, we would.

7 How are you fixed for the people that do all that
8 work?

9 MR. KEMPTON: Well, in anticipation of the work,
10 we recognized we had a significant program coming forward. So
11 during budget process, we actually requested additional person
12 years for our capital outlay support effort.

13 We have about a thousand positions that we will
14 be working to fill during this fiscal year.

15 Recognizing that it takes time to assimilate
16 those employees into the department and to train them to be
17 productive, we have also worked with the Professional Engineers
18 in California Government and the Civil Engineers and Land
19 Surveyors of California to kind of balance the approach where we
20 can bring in contracted resources early on to fill the immediate
21 needs, which are primarily related to construction inspection,
22 and then move to bring on the engineers that we'll need to
23 deliver this large level of program over the next several years.
24 So, we're in the process of meeting those objectives.

25 Now, I will tell right now, I am pushing hard on
26 the department because I was not satisfied with our first
27 month's effort of bringing new people on board. We've got to do
28 better. We're gearing up with the recruiting process, but I am

1 pressing the department very hard to increase the amount of
2 hiring that we will need to do in order to bring on the approved
3 level of additional resources to accomplish this work.

4 CHAIRMAN PERATA: I see what you're making. It's
5 not enough.

6 But also it partially concerns me that you run an
7 agency with 23,000 people that really has the life blood of the
8 state as its mission.

9 Are we paying our people competitively in the
10 marketplace?

11 MR. KEMPTON: No, we are not. And that's the
12 fact of life over several years.

13 The Department of Personnel Administration on the
14 engineering side has moved to correct that problem, working with
15 the Professional Engineers in California Government, to correct
16 that situation.

17 I'm pleased to say that the budget includes a
18 correction of about 25 percent of the identified pay parity
19 issue that exists for the engineering side of the house.

20 I'm not in the bargaining business, and I have a
21 high regard for Mike Navarro with the DPA who's been doing an
22 excellent job in terms of trying to address these issues.

23 But it spreads across other classifications in
24 the department as well, and I would like to see those pay parity
25 issues addressed as we move forward.

26 But I have to tell you that it is a critical
27 problem because we are losing people on a regular basis to both
28 the private sector and to other public agencies, primarily on

1 engineering side. So, I'm hopeful that the recent pay increase
2 and the work of the Department of Personnel Administration will
3 help us to retain more of our good and experienced employees.

4 CHAIRMAN PERATA: I've sent you a letter.
5 Whether or not you've received it, it doesn't matter. What I've
6 asked, it's in connection with the reference that Senator
7 Ashburn made to the Infrastructure Bond.

8 One of the areas that we're looking at is goods
9 movement, the egress access to the ports. We have seen and
10 heard repeatedly that if we don't do something last week, our
11 ability to be competitive in goods movement logistics will fall
12 irreparably behind.

13 And it occurs to me that it's probably a lot
14 cheaper and more reasonable to go up than to purchase lateral --
15 except for where there are farmlands, and even then it takes
16 seven years -- that we own the air rights. So, I've sent a
17 letter to you asking that you do an analysis of double-decking.

18 You know, you do grade separations for trains.
19 It appears to me, and I know, that we can separate tractor
20 trailer traffic, particularly in the urban areas, away from the
21 vehicular traffic.

22 And a lot of people have always said to me,
23 "Well, this is earthquake country; we can't do that." Well,
24 that's simply not true. There's no evidence that suggests that.

25 In fact, we retrofit things now. Either we're
26 fooling a lot of people by saying we wrapped this thing in
27 cellophane and we're going to be cool, or we can do it. That's
28 one thing, because I think you know that when you go to the

1 voters and say you're going to be getting something, they are
2 smart enough to know if something's realistic.

3 And we just cannot possibly afford the
4 acquisition costs necessary in the state. We just can't.

5 Then the second letter was dealing with toll
6 lanes. My predecessor, the one before John. John didn't care.
7 He just drove in the median. He didn't give a darn.

8 [Laughter.]

9 CHAIRMAN PERATA: Years ago, where you're a
10 liberal Democrat, the idea of a toll anything was considered to
11 be, like the Lexus-lane concept, just for rich people. Now
12 there's huge amounts of evidence to indicate that's not the
13 case.

14 And yes, we're one of two places in the country
15 that have been stupid enough to call these thing freeways.

16 So, what I've asked you to do is to look at the
17 prospect and possibility for that. I represent probably as good
18 a cross section of working Californians, or Californians who
19 would like to work. And, you know, if they can make a choice
20 between getting in the car and taking a toll lane to pick up
21 their child at 6:00 o'clock or pay the downside freight on that,
22 I'm prepared to let them make a decision. We make enough
23 decisions in their lives.

24 So, those are the two.

25 Also, I was contacted by a Congressman right
26 after the federal bill passed, and the request was made that
27 could we get this thing fast-track, design built, or whatever,
28 because he was afraid that the federal expiration date would

1 come before the ability to adding a lane.

2 MR. KEMPTON: On I-405.

3 CHAIRMAN PERATA: Yes. I think the expiration
4 date was 2009.

5 MR. KEMPTON: Correct.

6 CHAIRMAN PERATA: So, it just sort of reinforces
7 exactly. And this is why I think you have to purchase a few
8 things.

9 So, I would join with my colleagues to suggest
10 that you tell us what kinds of things that you think we could be
11 doing, beginning from the costs of services, legitimate cost of
12 services to be competitive, into the other areas.

13 We'll sort out the political stuff. We're really
14 good at that.

15 SENATOR BATTIN: I don't know.

16 CHAIRMAN PERATA: Some of us will. And I'll
17 guide you, just trust me. I see your degree's in political
18 science. This is very apt.

19 I just want to say in sum, you're really a lot
20 better than I thought we'd ever get.

21 [Laughter.]

22 CHAIRMAN PERATA: I didn't think somebody with
23 your background would do this. I just want to thank you for it,
24 because I certainly know you're not doing it for the money.

25 I had a little sense about your judgment when you
26 partnered with D.J. to be in business. You seem to have
27 overcome that just fine.

28 [Laughter.]

1 CHAIRMAN PERATA: But seriously, I am delighted
2 to have someone of your experience and your caliber. There's a
3 lot of people who are from the sand, gravel and asphalt caucuses
4 that have worked with you over the years, and they know better
5 than anybody what you're capable of. And I'm assuming they're
6 here to support you.

7 [Laughter.]

8 CHAIRMAN PERATA: We're about to find out. Those
9 who would like to speak in support of the nominee, you probably
10 heard from the comments that he's in his mother's arms, so don't
11 spend too much time.

12 Oh, Carl, come on. You can't be the first.
13 You've come a long way. It probably took you forever to get
14 here, too. Traffic was bad.

15 [Laughter.]

16 MR. GUARDINO: When I left I was in support.
17 When I got here --

18 [Laughter.]

19 MR. GUARDINO: For the record, Mr. Chair and
20 Members, my name's Carl Guardino. I'm CEO of the Silicon Valley
21 Leadership Group. We're not part of the sand and gravel and
22 asphalt coalition. We're from the attack coalition.

23 But we are thrilled to be here in support of
24 Will. I learned a long time ago, when the deal looks like it's
25 closing, shut up. So, I'll be very brief.

26 Will taught me many lessons over the 20 years
27 that we've been friends and professional colleagues. The main
28 one was a quote he said while running one day in the hills above

1 his home, "With your own money be generous; with taxpayers'
2 money be frugal."

3 He's frugal with other people's money. He's
4 efficient. He's creative, and he's one of the reasons why
5 Highway 85 was built when the first half-cent sales tax to pass
6 in any California county in Santa Clara. We had originally
7 stole him away from Caltrans to run that campaign after we
8 promised voters all three improvements would be built on time
9 and on budget. Will was our insurance policy to make sure that
10 we kept our word as private citizens.

11 We know he's going to do an excellent job in his
12 continued work at Caltrans.

13 CHAIRMAN PERATA: Thank you. When I was on the
14 county Board of Supervisors, I asked, "How do we get one of
15 those?" We watched you down there.

16 But I think that comment about how to spend
17 different people's monies is probably oxygen lock, high
18 altitude. You say silly things.

19 [Laughter.]

20 CHAIRMAN PERATA: Thanks for being here, Carl. I
21 appreciate it.

22 MS. WEST: Mr. Chairman and Members, I'm Sarah
23 West with the Self-Help Counties Coalition. We're the
24 organization of counties where the local voters took things into
25 their own hands and passed half-cent sale taxes for
26 transportation programs. There's 17 of those counties now.
27 We're putting close to \$3 billion into the state's
28 transportation system.

1 I've been working with this group for about 12
2 years. And when you bring up the issues of project delivery,
3 and speedy delivery, and those kinds of things, I think that
4 Caltrans has found a person to solve those problems. Our
5 members have covenants with our local voters to deliver a
6 specific list of projects in a specific period of time, and it's
7 very frustrating sometimes because those projects are on the
8 state highway system. So, we needed to work cooperatively with
9 Caltrans.

10 And Will Kempton will get that job done. Thank
11 you.

12 CHAIRMAN PERATA: You're welcome.

13 Most of you can just go name, rank and serial
14 number, if you'd like.

15 MR. BALGENORTH: He wants name, rank, and serial
16 number. We're in support. Bob Balgenorth, State Building
17 Trades and past Chair of the CTC.

18 One thing I would like to say is that his
19 openness and his ability to respond to the CTC has raised the
20 level of trust there to a new level, and we appreciate that.

21 CHAIRMAN PERATA: Thank you.

22 MS. WILLIAMS: Good afternoon. I'm Stephanie
23 Williams with the California Trucking Association.

24 Our members are also in support of this
25 candidate. We have 75 different letters from companies
26 throughout the state supporting him, and we urge your
27 nomination.

28 Thanks.

1 CHAIRMAN PERATA: Thank you.

2 MR. BLANNING: Hi. Bruce Blanning, Professional
3 Engineers in California Government. We're PECG, and we've
4 worked with Will for many years, and very closely during the
5 past year. We represent about 8,000 of his engineers in the
6 department.

7 And he did it again today. He spoke well of his
8 employees. Our people really appreciate that. He's doing a
9 great job and he was a great choice.

10 CHAIRMAN PERATA: Thank you.

11 MS. BAKER: Mr. Chairman, Members of the
12 Committee, DeAnn Baker, representing the California State
13 Association of Counties, here in support.

14 As evidenced by the previous discussion, Will's
15 leadership qualities are not only evident, but they're mainly,
16 just to name a few: collaborative, action oriented, very
17 ethical. I think you truly have found someone that understands
18 the meaning of partnership and will exercise that.

19 For that reason we're here in support. Thank
20 you.

21 CHAIRMAN PERATA: Thank you.

22 This is like obligatory; right?

23 MR. SMITH: Yes. I don't want any questions,
24 either.

25 [Laughter.]

26 MS. SMITH: D.J. Smith. I've known Will for 25
27 years at Caltrans, Santa Clara County. He was a partner doing
28 transportation consulting and project delivery for 10 years with

1 us. You will find no one better qualified, more knowledgeable,
2 more creative than Will Kempton, and finally, more dedicated day
3 in and day out.

4 Thank you.

5 CHAIRMAN PERATA: Thanks, D.J.

6 MR. GRASSO: Good afternoon. Tony Grasso with the
7 Associated General Contractors of California.

8 We are proud to be here to support Mr. Kempton in
9 his appointment. We are very much behind his commitment to
10 deliver a performance-based management system that will make
11 Caltrans an even more pro-active mobility agency. And for that,
12 the construction industry is very much behind Mr. Kempton and we
13 look forward to this.

14 Thank you.

15 CHAIRMAN PERATA: Thank you.

16 MR. HALEY: Mr. Chairman and Members, Eric Haley,
17 Executive Director for the Riverside County Transportation
18 Commission.

19 I, like many others, very known Will about 25
20 years. And I think he's the best qualified incumbent in this
21 job that I've experienced in my entire career. Without
22 qualification can support him.

23 I'm also delighted by the fact that he knows our
24 area better than anyone who's occupied that chair, and that'll
25 mean a lot to the 29 elected officials I work for.

26 And finally, in tough environments, he's going to
27 be asking a lot of us to come up with some serious cash to be
28 partners, and he has the credibility and track record to make

1 that request, and further more, to make it successfully.

2 So, I thoroughly endorse him.

3 CHAIRMAN PERATA: Thank you. Thanks for being
4 here.

5 MR. PEDROTTI: Kevin Pedrotti, representing the
6 Engineering and Utility Contractors Association.

7 We, as all the people behind me, support Will.
8 We think he's a great guy. He's been very open to the
9 Association, and has taken time to meet with them both here and
10 in the Bay Area. We appreciate that.

11 Thank you.

12 CHAIRMAN PERATA: Thank you.

13 MR. VANEKLASEN: Good afternoon. My name is
14 Ethan Veneklasen. I'm the Deputy Director of the Contra Costa
15 Council. The Contra Costa Council is a public policy advocacy
16 organization in Contra Costa County, representing about 400
17 employers. We're also the folks who brought you Contra Costa
18 County's Measure C and Measure J, transportation sales tax
19 measures, with much help from Will and our other coalition
20 partners along the years.

21 I think Mr. Kempton mentioned it during his
22 comments, and that's the importance of partnerships. I've seen
23 it first-hand. All of us have seen it first-hand, his ability
24 to build partnerships between state and federal agencies, county
25 and regional agencies, and perhaps, from our standpoint the most
26 important part of that, which is the private sector is un
27 paralleled. There's nobody else who does it as well as he does.

28 The Bay Bridge discussions that we were engaged

1 in as well as the Bay Area Council, and some of the other
2 business organizations, he did a fantastic job in representing
3 the administration in those discussions.

4 So, we're here to join in the love fest and
5 encourage your expeditious confirmation. Thank you.

6 SENATOR PERATA: Thank you.

7 MR. GALLEGOS: Mr. Chairman and Members of the
8 Committee, Gary Gallegos, Executive Director for the San Diego
9 Association of Governments.

10 We're here in strong support of Director Kempton.
11 We urge your quick confirmation of him.

12 He's really reached out in terms of partnership,
13 and I'm confident in terms of on us working together that we can
14 not only make life better for San Diegans, but for California in
15 general. We urge your support.

16 CHAIRMAN PERATA: Thanks for being here.

17 MR. CRUZ: Chairman Perata and Senators, Joe
18 Cruz with the California Alliance for Jobs.

19 We are here in strong support for Will Kempton as
20 well. The traveling public as well as the construction industry
21 couldn't have asked for finer, more qualified individual to lead
22 Caltrans. We look forward to working with Will in the future.
23 We worked with him in the past on helping counties pass our
24 sales tax measures, and Will understands public financing, and
25 more importantly, knows how to deliver projects.

26 Thank you.

27 CHAIRMAN PERATA: Thank you.

28 MR. MEYER: Paul Meyer, representing the

1 Consulting Engineers and Land Surveyors of California.

2 We've known Will for over 20 years, like many
3 others. Fully support his confirmation.

4 I can tell you from personal experience that when
5 he says he's fully committed to speeding up project delivery,
6 it's not at all rhetoric. It's extremely high priority for him.

7 Thank you.

8 CHAIRMAN PERATA: Thank you.

9 MR. EVANS: Thank you, Mr. Chairman and
10 Committee Members. My name is Kurt Evans. I'm with the Santa
11 Clara Valley Transportation Authority.

12 Over the years that we have been working with
13 Will Kempton in various capacities within our county, what we
14 have been most impressed with is his can-do attitude. When you
15 sit down with Will and talk about issues and talk about
16 challenges, you don't get a list of reasons why something can't
17 be done. What you get is how can we can make this happen.

18 We believe that is exactly the type of attitude
19 we need at Caltrans as we all work collectively together to
20 deliver much needed transportation projects throughout this
21 state on time and on budget.

22 Thank you.

23 CHAIRMAN PERATA: Thank you.

24 MR. McCLEARY: Thank you, Mr. Chairman and
25 Members. I'm Bob McCleary of the Contra Costa Transportation
26 Authority.

27 You have on file letters from my Chair and from
28 me personally commending Will to you. I do agree with

1 everything that's been said today.

2 I worked for Will for four years, and I can tell
3 you he is an outstanding strategic planner, implementer of
4 projects, and very sensitive to community issues and interests.
5 I don't think there's a better person in the state for this job.

6 Thank you.

7 CHAIRMAN PERATA: Thank you.

8 Any opposition?

9 MR. HANSEN: I feel a little bit out of place
10 here.

11 CHAIRMAN PERATA: You're among friends.

12 MR. HANSEN: Thanks for giving me my opportunity.
13 My name's Don Hansen. Please be kind to me. I know he's in his
14 mother's arms here.

15 I'm one of the ex-employees. And over a period
16 of time I've attempted to contact Mr. Kempton. And I gave him
17 some information.

18 Essentially what I did, engaged in, was
19 whistle-blowing. And basically I got a nonresponse.

20 I listened to everybody here. I feel like I
21 should be encouraging him. And I think that he probably will do
22 a good job.

23 But from an employee perspective, at the working
24 level, when he allows his executive staff to retaliate, to take
25 unsuspecting employees to strip clubs, when I give him this
26 information, he doesn't respond.

27 I have declarations from the -- from his
28 executive staff that say that he never spoke to them about --

1 about the strip club, you know.

2 I have a case at the SPB for retaliation for
3 engaging in a protected activity of reporting improper
4 government activities.

5 CHAIRMAN PERATA: What's the status of your case?

6 MR. HANSEN: It's pending.

7 I think he really will do a good job; I do. I'm
8 convinced that you will confirm him.

9 But my recommendation would be maybe to pause and
10 think about it a little bit. Let him demonstrate on these
11 issues, on the issues of protected activity.

12 The information I gave involved things that are
13 codified in the Penal Code, 182, 425, 484, 506, 505. And in the
14 Federal Code, 810 U.S.C. 666.

15 I tried to do my job. And I tried to maintain
16 all this stuff within the department. I was ignored. I had to
17 go to the federal government and whistle blow there.

18 CHAIRMAN PERATA: How long ago was this?

19 MR. HANSEN: This started in December, when I
20 first initially attempted to contact Mr. Kempton. And this
21 process started with Mr. Kempton in December. And it continued
22 on through some forms, either through his employees or up to and
23 including him, and it continued on up until May.

24 So, starting in December of 2004 up to May of
25 2005, I have actively participated in protected activities.

26 I'm 24 -- no, I'm 54. And you probably all
27 realize to resign from state service after 25 years at age 54,
28 my retirement's not the best.

1 Now, I am looking for another job. And I'm well
2 qualified. I'm a registered civil engineer, the ones that are
3 leaving your department.

4 So, although he may be doing well with the
5 constituents, with people like you, for individuals like myself
6 or at least myself, I think he's failed terribly. My experience
7 tells me he has.

8 Now, I've talked with other individuals that have
9 prepared reports that went to the Legislature on the status of
10 the department. And they gave information to the Legislators
11 knowing that it was false. Now, the message is real clear. If
12 you whistle blow, you might as well kiss any career, any
13 opportunities, good-bye.

14 So, since he's in his mother's arms, tap him on
15 the shoulder: wake up. Because these types of things don't
16 happen, aren't supposed to happen.

17 The Legislators passed laws that protected people
18 like me, but guess what? They don't.

19 Would any of you like any of your wife, your
20 family, the people that you care about to be subjected to, be
21 dragged to a strip club? Would you want your spouses to be
22 going there? It makes no sense.

23 All these actions that have hurt can be dealt
24 with. And that can be dealt with with adverse action for those
25 employees. It is codified, and it is in the process. It's
26 doable, and it should be done.

27 These are career executive appointees. So, they
28 essentially serve at the pleasure of the Governor.

1 Individuals that have been subjected -- other
2 individuals that have been subjected to similar treatment, to
3 harassment, to hostile work environment, end up going into their
4 bathrooms and throwing up, having their -- they're constantly
5 constipated from the stress.

6 This is not the way that anybody, regardless
7 whether it's a public employee or private, anybody should have
8 to live their lives in order to make a living.

9 CHAIRMAN PERATA: I'd like to give Mr. Kempton a
10 chance to respond. And also in defense not of you, you don't
11 need any defense, but he just got to the scene of the wreck.
12 I'm as generally critical as you are specifically, so I can
13 appreciate what you're saying.

14 Will.

15 MR. KEMPTON: Thank you, Senator.

16 I do care about my employees and feel badly for
17 the situation that has occurred with Mr. Hansen.

18 When I first heard from Mr. Hansen, as I recall,
19 the communication was anonymous. And I do receive from a number
20 of employees' anonymous communications telling me of possible
21 wrong doings in the Department, and I follow-up on every one of
22 them, as I did in this case.

23 I contacted the deputy who supervises the unit to
24 which Mr. Hansen was assigned and asked him to look into the
25 situation.

26 As it turns out, over a period of a number of
27 months -- and by the way, I must say that the trip to the strip
28 club, which did occur not on state time but during lunch, as I

1 am advised, which was not appropriate activity under my -- in my
2 judgment but that occurred in December of 2002, or '03. It was
3 before my arrival at the department.

4 Nonetheless, the issues that have been raised,
5 there are three separate --

6 SENATOR ASHBURN: Mr. Chairman, can I interrupt?
7 I'm very uncomfortable hearing the details of
8 this case.

9 You filed official actions with the appropriate
10 state agencies. It has not been adjudicated.

11 MR. KEMPTON: Yes. I was just going to say, Mr.
12 Chairman, there are three separate investigations underway: an
13 internal investigation, the Office of Inspector General at the
14 U.S. Department of Transportation, and with the State Personnel
15 Board.

16 CHAIRMAN PERATA: If you could just briefly
17 characterize the policies that you have for complaints,
18 personnel complaints, or such as occurred here.

19 MR. KEMPTON: We would, in case of this and the
20 protected action that he is referring to, obviously it's
21 appropriate that the State Personnel Board would get involved in
22 that.

23 Clearly, we try to resolve these issues
24 internally if it's appropriate, and there is an investigation
25 being conducted by our Equal Employment Office, and that
26 investigation has been completed. We expect a resolution of
27 that case very shortly.

28 So, I believe I did all of the right things in

1 referring these complaints to the appropriate people within the
2 department, and certainly have indicated to Secretary Minetta
3 that I would be very helpful to cooperate in any investigation
4 that's forthcoming from the OIG.

5 CHAIRMAN PERATA: Thank you.

6 MR. KEMPTON: And will take corrective action as
7 appropriate if it is deemed necessary.

8 SENATOR CEDILLO: The only question then for us,
9 because it seems to try employ due diligence, it's simply a
10 question of whether or not he's received communication and been
11 made aware of that. That seems to be part of the concern I've
12 heard raised today, was that a sense that this fell on deaf
13 ears. It appears that it hasn't. So, the question is whether
14 or not appropriate efforts were made to communicate.

15 Obviously, you can't respond to anonymous
16 inquiry, but once the person identifies themselves --

17 MR. KEMPTON: I did receive communications
18 directly from Mr. Hansen where he signed his name. So, I did
19 receive those after the initial contact.

20 SENATOR CEDILLO: And you were able then to
21 communicate back to Mr. Hansen?

22 MR. KEMPTON: No, I did not have a communication
23 with him directly.

24 Frequently I am advised by my -- my legal staff
25 and others involved in these processes that it would not be a
26 good idea for the Director to respond directly in some in
27 instances.

28 But I did ensure that the issues that he raised

1 were investigated. There are -- there is another side to all of
2 this, of course.

3 SENATOR CEDILLO: I'm not here, at least, to
4 focus on the details or the specifics, but rather that processes
5 exist to accommodate concerns that are raised, and that those
6 processes are effectuated.

7 In this instance, while it may not be appropriate
8 for you to engage a complainant, it is appropriate to give them
9 notice that you have received it and that you are proceeding. I
10 think there's a distinction between trying to resolve or get
11 engaged.

12 You know, you have counsel. It's not for me to
13 question that, but clearly it seems in terms of what I heard is
14 part of the concern is that this fell on deaf ears. In many
15 instances it's been my experience that people want to know that
16 this is not on deaf ears, that it has been received, that
17 there's notice of it, and that a course of action is being
18 taken.

19 So, what I heard you say right now is that your
20 counsel told you not to do that.

21 MR. KEMPTON: I appreciate the observation,
22 Senator. It's well founded. Thank you.

23 MR. HANSEN: May I please correct one aspect
24 here, is that Mr. Kempton is correct. I did stop by his office
25 with paper to use as a talking point so that I could actually
26 deal with him face-to-face. Unfortunately, you were in District
27 Three at the time. So, I left my talking points that I wanted
28 to discuss with him. That occurred on December 17th.

1 On January 3rd, I also left another document that
2 gave further information with my name. So, it wasn't
3 unanimous. It was a short period of time.

4 And so from that, I do have -- and declarations
5 by executive staff --

6 CHAIRMAN PERATA: Well, we're not going to --

7 MR. HANSEN: The point I'm -- please, Senator.
8 The point I'm just trying to make with this, declarations from
9 his executive staff under penalty of perjury saying that he
10 never spoke to them about this is given from the department to
11 the State Personnel Board. And what I'm hearing is that he did.

12 CHAIRMAN PERATA: Well, we're not going to debate
13 the case.

14 MR. HANSEN: That's not my intention. I
15 apologize.

16 CHAIRMAN PERATA: Is there anybody else in
17 opposition who would like to come forward?

18 SENATOR CEDILLO: If I may, Mr. President, if
19 that was your counsel, as we've talked, I think it's important
20 for you to go back and advise your counsel that at least I don't
21 feel that that's an appropriate response, that there should be
22 notice and an opportunity to respond. Communication to the
23 complainant that it has been received and that you are
24 proceeding on what you believe is the appropriate course.

25 But there must be some modicum of due process
26 that employees feel is available to them that's both procedural
27 and substantive.

28 I would suggest to you that you return to your

1 counsel and tell them that that is not well received, and that
2 they should come up with a different course of action for you.

3 CHAIRMAN PERATA: Mr. Hansen, thank you for being
4 here. I know it's not the easiest things you've done this week,
5 so thank you.

6 Anyone else? There's a bunch of guys that just
7 came in here late, but we're not going to recognize them. They
8 had better things to do, obviously, than to be here on time.

9 You may want, however, to turn around,
10 Mr. Kempton, and look and see who they are.

11 [Laughter.]

12 CHAIRMAN PERATA: We've actually had a long
13 series of praise.

14 Would you like to sum up?

15 SENATOR BOWEN: Is it just because it's a
16 Caltrans nominee that people are late?

17 [Laughter.]

18 CHAIRMAN PERATA: With that.

19 MR. KEMPTON: Senator, that's just the image that
20 I want to change.

21 Let me in closing reiterate what Senator Ashburn
22 said, while there are many challenges, those challenges present
23 opportunities, and I appreciate the opportunity to appear before
24 you today, and also the opportunity to improve the operations of
25 the State Department of Transportation.

26 Thank you.

27 CHAIRMAN PERATA: Thank you, sir.

28 Please call the roll.

1 SECRETARY WEBB: Ashburn.

2 SENATOR ASHBURN: Aye.

3 SECRETARY WEBB: Ashburn Aye. Bowen.

4 SENATOR BOWEN: Aye.

5 SECRETARY WEBB: Bowen Aye. Cedillo.

6 SENATOR CEDILLO: Aye.

7 SECRETARY WEBB: Cedillo Aye. Battin.

8 SENATOR BATTIN: Aye.

9 SECRETARY WEBB: Battin Aye. Perata.

10 CHAIRMAN PERATA: Aye.

11 SECRETARY WEBB: Perata Aye. Five to zero.

12 CHAIRMAN PERATA: Congratulations.

13 MR. KEMPTON: Thank you very much, Senator.

14 [Thereupon this portion of the
15 Senate Rules Committee hearing
16 was terminated at approximately
17 2:40 P.M.]

18 --ooOoo--
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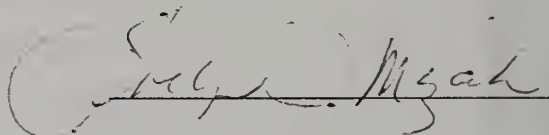
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of August, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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*Flex your power!
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August 11, 2005

The Honorable Don Perata, Chairman
Senate Rules Committee
California State Senate
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

Thank you for the opportunity to respond to your questions in advance of my confirmation hearing scheduled for August 17, 2005. I appreciate the courtesy extended to me regarding an extension of time for submitting these responses due to my mother's death. I also look forward to appearing before you and the Senate Rules Committee to address any comments you may have regarding my appointment as Director, California Department of Transportation (Caltrans).

In response to the specific questions you present, I offer the following responses:

- 1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as Director of Transportation (Caltrans)?*

Throughout my entire career, I have worked to improve transportation in California. It is an issue that I am passionate about and one that I know well. It is my hope that during my tenure at Caltrans, there will be a marked improvement in California's transportation system—that is, more safe, reliable mobility for both people and goods. With that, I come to this position with clear objectives:

- To transform Caltrans from a bureaucratic department of transportation to a *mobility company*—an organization that is responsive, accountable, and productive.
- To develop *true* partnerships with regional and local transportation organizations.
- To instill a "Can do" attitude throughout the Department. We need to find ways to make things happen, rather than just saying, "No!"

"Caltrans improves mobility across California"

AUG 11 2005

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2. *What is the age makeup of your workforce? Approximately what percentage of Caltrans' middle and upper management will retire in the next several years?*

Department of Transportation
 Department Workforce Count by Age Group
 As of August 5, 2005

<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Age</u>	<u>Department</u>
<u>< 24</u>	<u>25-34</u>	<u>35-44</u>	<u>45-49</u>	<u>50-54</u>	<u>55-59</u>	<u>60-64</u>	<u>65-69</u>	<u>70+</u>	<u>Total</u>
46	2,221	6,230	4,370	3,740	2,625	999	256	103	20,590
0.2%	10.8%	30.3%	21.2%	18.2%	12.7%	4.9%	1.2%	0.5%	100%

Number of employees over age 49 that are eligible to retire: 7,723 (37.5%)

3. *What type of succession planning is in place to deal with the coming wave of retirements? Do you have staff training or development programs to train the next generation of managers?*

Caltrans is aggressively approaching succession planning through the selection, training, and development of mid-level managers, upper-level managers, and executive leaders.

Beyond the 80-hour, basic supervision training statutorily required for new supervisors, Caltrans uses a three-tiered approach to train managers and executives for leadership roles in the Department:

Management Training Program (MTP)

- MTP is intended for mid-level managers.
- MTP is a highly interactive eight-day program conducted over four months.
- Participants develop and improve their mid-level management skills through experiential learning exercises, a 360-degree individual assessment tool, small group problem solving, and networking.
- MTP participants are selected through a formal nomination process. The first cycle is scheduled to begin September 2005.
- The target is to train 1500 mid-level managers over the next six to eight years.

Leadership Training Program (LTP)

- LTP is intended for designated managers.
- LTP is a highly interactive program that provides opportunities for future leaders to assess and develop their leadership skills.
- LTP addresses critical business issues confronting Caltrans.

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- LTP includes experiential learning exercises, a 360-degree individual assessment tool, small group problem solving, and networking.
- LTP selects participants through a nomination process.
- Since its inception in October 2001, more than 475 designated managers have completed the program.
- Due to the program's overwhelming success, an LTP graduate course is currently being developed with a new advanced curriculum.

Executive Development Program (EDP)

- This program is the Department's proactive approach to develop managers who demonstrate potential to perform at executive leadership levels.
- The program includes an 18- to 24-month executive development assignment consisting of a mentoring program, individual rotational assignments, and formalized training programs.
- The primary objective for EDP is to expand the Department pool of well-qualified candidates prepared to effectively compete for executive leadership roles within the Department.
- Twenty-three participants have completed the course.

4. With respect to the Governor's proposed constitutional amendment, do you think it is good policy to apply a spending cap to specific funds dedicated to transportation?

I applaud the Governor and the Legislature for directing Proposition 42 funds to transportation this year. The Secretary and I have committed to the Governor that, by June 30, 2006, the Department will deliver \$4.152 billion in project commitments.

Ideally, California's transportation funding would be sufficient to meet transportation demand, would be sustained over a long period, and would be flexible enough to ensure highest priority projects are funded first. We are not, however, in ideal times with regard to government funding generally, and transportation specifically. Any reduction to transportation funding will impact transportation in California, limiting Caltrans' ability to respond to new demands. This is serious, and should be avoided if the state's budget situation at all permits us to avoid it.

As for the spending cap, I am not aware of any proposal for imposing a spending cap on specific funds dedicated to transportation. The Governor's proposal for structural budget reform submitted to the Legislature last January prevented the state from dipping into Proposition 42 money for General Fund expenditures any more after next year's budget. That proposal is also contained in the version of the proposal that is on the ballot. That change

would be hugely beneficial for transportation and imposes no cap at all on Proposition 42 or other transportation money.

The ballot proposal, though not the Governor's proposal to the Legislature, also has a provision restricting the expenditure of funds to the previous year's level, increased by the average of the previous three years' increase in revenue. This provision would apply to special funds. However, Department of Finance projections based on revenue growth estimates indicate this provision will have no impact on restraining projected expenditure growth until at least 2011. Furthermore, even if that provision did start to have application, any funds not able to be spent in any given year for a special fund must accumulate exclusively for use by that special fund in a later year. So the transportation program would not lose the money. Rather, these mechanisms would create a reserve to help for years when revenue drops, so as to smooth out the expenditure of Proposition 42 funds for transportation across boom-and-bust cycles.

Lastly, the Governor's structural budget reform proposal submitted to the Legislature, and the version on the ballot, does call for mid-year cuts if necessary to correct a fiscal emergency. If such an emergency occurs, I think transportation has to be considered just the same as spending for seniors, welfare, Medi-Cal, and other important needs facing our state.

5. *How can California's transportation financing be restructured to guarantee reliable, stable, and accountable short- and long-term strategic investment implementation?*

Transportation projects can take several years to bring to fruition, from the planning and environmental studies, through the actual construction. Because of this long-term development cycle, an effective transportation program cannot succeed if resources are not stable and reliable.

In the short-term, the single most important impediment to stable transportation funding is the structural imbalance in the statewide budget. Over the last five years, well over \$5 billion in transportation funding has been deferred, borrowed or diverted for other uses, because of the structural problems in the state budget. This funding was twice included in the Department's biennial State Transportation Improvement Program Fund Estimate forecast. The Fund Estimate is the long-range financial planning tool that is used by the California Transportation Commission and the Department to program transportation projects. In both instances, the funding was diverted, and the state was unable to provide financial backing for the programmed projects.

For long-term stability, a firewall for transportation funding is essential. Article XIX of the State Constitution provides such a firewall for the state excise tax on motor vehicle fuels. Other transportation funds, such as Proposition 42 and spillover funding do not

The Honorable Don Perata

August 11, 2005

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currently have the same protection. It is the unreliability of these other funding sources that causes a great deal of difficulty in transportation planning and project delivery. If these funds are not guaranteed, then the Department and regional agencies cannot utilize them until they actually materialize. This feast-or-famine funding is extremely inefficient and can cause long delays in project completion.

6. *Why does Caltrans use multiple methods to display transportation expenditures, especially since federal law requires the use of a single modified accrual basis?*

Most funds in the Governor's budget, including federal funds, are displayed on a "modified-accrual" basis, which shows funds as expended when the state commits to making the payments, instead of when the cash is actually transferred out of the fund. Cash accounting shows funds as expended when the cash actually leaves the funds. Because many transportation projects expend funds over several years, the modified-accrual accounting would show all expenditures in the first year, instead of over several years as the contractors are actually paid. For transportation funds, using modified-accrual would sometimes result in a negative fund balance, when the funds may have several hundred million dollars of cash balances. State statutes allowed the Department of Finance to display capital outlay and local assistance expenditures on a cash basis while continuing to show state operations expenditures on a modified accrual basis. This made it difficult to determine total expenditures in a given year. It was never the intent of the Department or the Administration to mislead, complicate, or confuse comparisons from one year to the next.

The system used in the past is not the best system, and we look forward to developing an accrual method that will be consistent with other funds, but will still account for the unique funding challenges faced by the Department.

7. *Do you concur with the recommendation of the legislative analyst that a single standard budgetary display method should be used? If not, why?*

Yes, I do concur with this recommendation. A single standard budgetary display is a logical and consistent methodology for projecting and reporting all expenditures in the Governor's budget and year-end statements. Caltrans' accounting and reporting will be consistent with the statewide system of accounting and budgeting. Agreement has been reached with the Department of Finance and the Legislative Analyst's Office to show Caltrans' expenditure information comparable to the rest of the budget.

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8. *AB 144 reiterates in law that the replacement bridge for the east span of the San Francisco-Oakland Bay Bridge is to be the self-anchored suspension design. Are you confident that this bridge design is constructible and will provide motorists traveling in the Bay Area with a structure that is safer than the current east span of the Bay Bridge?*

Absolutely. It will be complicated, as I mentioned throughout the hearings this spring, but it is buildable. There is no doubt in my mind that the self-anchored bridge can be constructed and will be a safe, structurally sound bridge.

My recommendation that we proceed with the skyway extension rather than the self-anchored suspension span was based primarily on one factor—I believe the skyway extension offered the surest way to construct a bridge in the shortest amount of time. With that said, I am very pleased that the Legislature and the Governor have agreed to a funding solution for the Toll Bridge Seismic Retrofit Program and that we can now proceed to complete that program. The self-anchored suspense project has already been advertised and we are hopeful of receiving multiple competitive bids.

9. *You have quoted publicly as saying that you expect at least two and as many as three bidders to bid on the replacement self-anchored suspension design. Since only one bidder submitted a bid for this same design in 2004, can you explain your optimism about bid prospects this year? What has changed from last year?*

This year we have a funding package, we de-federalized the project, and we have increased the bidder's stipend to \$3 million. During last year's advertisement, these factors were not in place. In addition, we have made several changes in the construction specifications to reflect industry input.

10. *AB 144 recognized that the funding commitment to complete the toll bridge program is a shared commitment between the region and the state. The bill expands that regional-state partnership to now include management and oversight of the program. Could you describe your current working relationship with representatives from the Bay Area Toll Authority and your expectations for this partnership into the future?*

I think we have a good relationship with the Bay Area Toll Authority (BATA). As I mentioned previously, one of my focus areas is to develop and nurture relationships with our partners. I fully expect that we will be side-by-side with BATA and the California Transportation Commission, in the Program Oversight Committee as created by AB 144, as we mutually work toward completion of the Toll Bridge Seismic Retrofit Program.

The Honorable Don Perata
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11. Are you confident that your department, working with the Bay Area Toll Authority and California Transportation Commission, can deliver this project on schedule at or under the revised budget?

There will undoubtedly be some difficulties ahead. The self-anchored suspension structure is a very complex project. I am confident that with the three agencies working together, we can deliver this and the remaining projects on time and within budget.

12. The state toll bridge program has experienced numerous cost increases that were brought to the attention of the Legislature well after those increases were known inside the department. Do you think the enhanced oversight and reporting requirements contained in AB 144 will result in earlier recognition and exposure of any problems in the program? Are you committed to informing the Legislature, in a timely way, when unexpected problems arise in the Toll Bridge Retrofit Program?

Definitely. I have publicly stated my commitment to keeping the Legislature fully informed of the status of the Toll Bridge Seismic Retrofit Program in a timely manner. As I have said repeatedly, if there is bad news, the Administration and the Legislature will know it when I know it. Furthermore, I trust that the increased oversight will provide additional assurances that full and timely disclosure will be forthcoming.

13. What lessons have been learned from the recent Oakland Bay Bridge construction history? How can these lessons be applied to future projects?

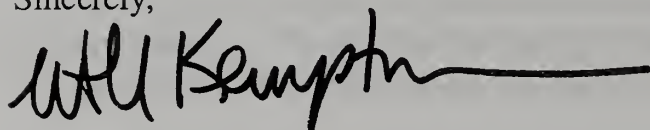
The biggest lesson has been the need for communication. Reports to the Legislature will be provided in a timelier manner and the Legislature will know about any problems as soon as they occur.

Overall, I am very proud of the work the Department, along with our contractors, have achieved on the Toll Bridge Seismic Retrofit Program. We have initiated myriad innovative approaches to solving problems, reducing costs, and decreasing schedule times. The Toll Bridge Seismic Retrofit Program has provided a once-in-a-lifetime opportunity for engineers and I trust that the lessons learned will have a significant, positive impact on our ongoing approaches to project delivery.

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Again, I look forward to appearing before you and the Senate Rules Committee on August 17. In the meantime, should you have additional questions, do not hesitate to call me at (916) 654-5267.

Sincerely,

A handwritten signature in black ink, appearing to read "Will Kempton", followed by a long horizontal line.

WILL KEMPTON
Director

c: The Honorable Jim Battin, Vice-Chairman
The Honorable Roy Ashburn
The Honorable Debra Bowen
The Honorable Gil Cedillo
Secretary Sunne Wright McPeak

EUNICE DAVID

10430 Wilshire Boulevard, Los Angeles, CA 90024 (310) 470-2022 * FAX (310) 470-3068

e-mail: eunice@haldavid.com

To: Don Perata, Chairman, Senate Rules Committee

From: Eunice and Hal David

Date: July 12, 2005

=====

Dear Mr. Perata:

I'm so sorry that I missed the deadline for submitting a statement outlining my goals for the California Arts Council. My husband and I were out of the country, and just returned a few days ago, so I have written this up as quickly as possible. I understand that my statement will be able to be submitted at another session of the Senate Rules Committee. Here is the statement that I've prepared.

My goals for the California Arts Council parallel the mission of the Council itself: to promote arts throughout California. I have served on the Los Angeles County Music and Performing Arts Commission, and when while there, I helped appropriate funds for the Commission, while helping to decide to whom those funds should be disseminated in the arts community. My goals would be similar as a member of the California Arts Council.

To help raise awareness of the Council, I am co-chairing a medal of the arts ceremony, during which the Governor will award the medal to five California artists who have reached outstanding achievements in their fields. It is our hope that this event will be highly publicized, and will bring awareness and financial support to the Council.

I am an avid supporter of the California Arts License plate program, and have been successful in encouraging many of my friends to purchase the plates, keeping in mind the valuable income the Council receives from this program.

It is my fervent hope that in the near future, we, as a Council, and as a State, will be able to include more art education programs in our schools and communities,

JUL 12 2005

helping us to become a role-model for other states, and that we will be able to lend financial support to artists and art organizations throughout this State. I believe that it is vital to our mental well-being and growth for this to happen.

Sincerely submitted,

RICHARD B. SHAPIRO

July 6, 2005

Ms. Nettie Sabelhaus
Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814

Dear Ms. Sabelhaus:

This letter is intended to respond to the letter sent to me by Senator Don Perata dated June 29, 2005, pertaining to my pending confirmation hearing as an appointee on the California Horse Racing Board.

Below you will find each of the posed questions and answers to those questions:

Q. Please provide a brief statement of goals. What do you hope to accomplish during your term on the Horse Racing Board?

A. On a macro level my main goal as a Commissioner is to help California return to be recognized as the most prominent State in the nation for horseracing. Today, racing is experiencing a variety of problems and facing a myriad of competitive challenges that threaten its standing. Our fan base is eroding, our racing horse population is declining and our overall handle is decreasing. I hope to assist all parties involved in the industry to revitalize and restructure our racing program resulting in a reversal of declines in recent years. To do this, racing needs to reinvent itself in certain ways, provide an improved program, maintain the highest degree of wagering security and integrity, create new wagers, improve its facilities and market itself better to its diverse and polarized potential customer base. I hope to bring new energy and more out of the box thinking to this effort. As a Commissioner I am placed in the role of a regulator, but just as importantly, I also believe that it is our responsibility to demand that all industry participants invest more into the sport and the long term success of the business. By doing this, it will benefit all parties concerned, solidify the sports' long term standing and increase revenue to the State of California.

Q. How do you assess the future of horse racing in California? Is its financial future dependent on its ability to compete with gaming competitors? How do you think attendance at racetracks can be increased?

A. This is a very difficult challenge. Since the 1980's when racing first began simulcasting its racing signal, on track attendance has steadily declined. With the

RICHARD B. SHAPIRO

advent of Advance Deposit Wagering ("ADW") and the ability to watch races live via off track sites, the internet or television, on track attendance and handle have been eroded such that today only approximately 25% of handle is wagered on track. While overall handled dollars have increased due to out of state and market wagering, the local fan base has found it easier to watch and wager from home. Technology also has favored the home based fan as more information is readily available to the serious gambler via the internet and ADW providers. Consequently, race tracks have in part obsoleted themselves. Facilities that were constructed to accommodate crowds of up to 80,000 people are now frequently only attracting a few thousand, leaving those in attendance uncomfortable. Without on track patronage, track owners and operators don't have the incentive to justify modernization, and some tracks may disappear altogether. Due to gaming at tracks outside California, purses offered at inferior tracks in other states are attracting away horses, thus diminishing our field sizes, resulting in poor wagering opportunities and frankly, all too often a poor show.

The Bring Back the Fans Committee was formed as an effort to face head on what ideas and steps racing should take to help reverse the annual decline in racing attendance. Racing is fractionalized in many ways and the committee was formed to bring together a unified group to explore crossover marketing efforts, shared data bases, cooperative advertising purchases, explore new thoughts on types of wagers, customer service technology, and new fan programs and education.

To increase attendance at racetracks today, more has to be offered to the patron than he or she can have in their own home. Racing has to provide an enjoyable social environment within comfortable and enjoyable facilities, and most of all it has to be a show aside from just gambling. Restaurant facilities and food service need to be improved and updated, wagering technology and services need to be improved, and customer service has to become a much higher priority. The overall show, including the quality of the races has to be an experience worth traveling the busy highways to see.

The future of racing in California is being seriously threatened as a result of gaming at other out of state racing venues. Racinos are able to offer higher purses, which in turn are attracting horses away from California, resulting in an average field size of approximately 8 entrants. Further, additional gaming revenues can justify the expense of improving the aged facilities throughout California. Racing facilities in California are on the average over 40 years old, they must be updated and provide a comfortable seating area for all fans in attendance. In the short term, racing in California will need financial assistance either in the form of on track gaming or subsidized revenues from off track gaming sources. California is at a competitive disadvantage to other states with racinos. While I support the need for additional gaming revenue as soon as possible, I believe this will not solve the long term problems facing racing. It is critical and essential that racing redefine itself with new fan friendly wagers attractive to new potential customers and concurrently develop non manipulative big score wagers which could prove to be life altering. Racing over

RICHARD B. SHAPIRO

the years has relied too often on tax relief and subsidies, and it must function and sustain itself on its own. Thus, while I support gaming relief for racetracks, I also feel strongly that racing has to better define and market itself for its long term survival.

Finally, I believe we should re-evaluate the wisdom of racing continuously nearly 52 weeks a year in the same markets. Statistics would support that this is diminishing the appeal to our customers and depleting our racing horse population. Every other sport has a season, and the most successful tracks in the country have short defined seasons. But today, we have nearly year round racing in the same market areas, overexposing the sport in these areas while under serving other potential markets. Our racing fairs need to be considered for additional racing dates, as racing coupled with County Fairs is an excellent breeding ground for new fans. The fair network provides the opportunity to indoctrinate more people in more locales within the state to live racing. I believe we should evaluate the racing calendar with this in mind.

Q. What role should marketing play in the effort to increase attendance and revenues?

A. During my short tenure on the CHRB, I have heard two schools of thought. One is that marketing and advertising don't matter as the growth is all in off track wagering. The other more traditional thinking is that we must market to bring fans back on track. While I recognize that the trend in wagering shows that the only predominant increases are off track, I believe it is critical to the future success of the industry that strong marketing efforts must be made to attract live fans. No sport can exist alone as a studio sport. As stated earlier, the live racing experience must offer more than a fan can get at home or over the internet. It must be a social, enjoyable experience. I believe racing should further consider creating a disparity between the payoffs on track and those off track. As we have seen, higher returns on wagers are a large motivating factor to dedicated fans. We need to consider how to create an incentive to get fans to go to the track, which could be in the form of a higher return or payoff on track as compared to off track wagering. As the racing fan base ages, it is critical to the long term success of the industry that marketing efforts are increased to indoctrinate and educate new fans.

Q. How extensive and serious is the illegal use of high-performance drugs on horses within the racing industry? What is the appropriate role of the Horse Racing Board in addressing this issue?

A. While alkalizing agents are not high performance drugs, they have proven to be performance enhancing by staving off fatigue in muscles. Aside from TCO2 or Milkshakes, there are unfortunately other illegal substances that are too prevalent in racing. The CHRB, as the guardian of the sport, must adopt the strictest possible rules, regulations and penalties in an effort to abolish the use of illegal or performance enhancing medications. As a member of the Medication Committee of the CHRB, I am a strong proponent that stiffer penalties will serve as a deterrent for any abuses of medication violations. New research to detect currently undetectable compounds should also be undertaken on a regular basis. This is one of the most threatening and serious issues facing all of racing today. We cannot afford to lose the public trust or harm our

RICHARD B. SHAPIRO

horse population and it is the CHRB's responsibility to oversee and enforce that all precautions will be taken to stop any use of illegal substances. Additionally, other illegal practices such as shockwave therapy close to race time should be enforced and dealt with similar to medication abuses.

Q. Do you believe the requirements of AB 52 will enhance your board's efforts in maintaining the integrity of horse racing in California?

A. There is no doubt that the testing for Milkshakes has already had a very positive effect for racing in California. When the first testing occurred, in excess of 12% of horses tested at levels exceeding acceptable standards. Today, with testing procedures in place, less than .01% of all horses tested have been positive. As a result we are now seeing stables and horsemen who left the state claiming that the playing field was unlevel, returning to California with renewed confidence in California racing. Our racing fans also have expressed great appreciation for the testing and now have confidence in the integrity of California racing. Nationally, California has become recognized as a leader in pre-race testing and security and the CHRB should continue its leadership efforts in the area of medication testing and regulation and enforcement.

Q. What do you believe the board should be doing to address jockey health issues, in particular, weight requirements?

A. The CHRB should be and currently is in discussions with a cross section of the industry including but not limited to jockey representatives, race tracks, trainer and owner representatives to undertake a comprehensive study to determine proper procedures to insure healthy jockeys are participating in California. Originally, this matter was brought forth by the Jockey's Guild with respect to increasing minimum riding weight. After a series of meetings and discussions it was determined that rather than adopt an arbitrary minimum weight standard, the overall health of the jockeys needed to be studied. For too long, a majority of jockeys have practiced unsafe health practices including purposeful regurgitating, drastic weight loss practices, ingesting unprescribed diuretics and medications and other techniques to achieve a light riding weight. The proposed study will analyze all factors necessary to maintain good health, including minimum weight. Once the study is completed the CHRB should move forward to adopt new minimum riding weight standards and implement an ongoing program to insure unsafe health practices are eliminated. In order not to ostracize California from other national racing standards, we are also working to involve other racing jurisdictions to participate in the study and adopt national standards.

Q. Specifically, what are your thoughts on the weight requirements for jockeys?

A. This too is a very difficult issue. First and foremost jockey health standards need to be studied and then implemented. Riders must not be asked to ride in unsafe or under unhealthy conditions. That having been said, it is also unreasonable to think that all jockeys should qualify for all riding assignments. Just like in each other sport, players

RICHARD B. SHAPIRO

cannot play all positions, nor have an unlimited competitive life span. As athletes, jockeys have a responsibility to maintain good health practices to maintain peak performance levels. We must also consider the overall weight that a horse is carrying in a race, as the more weight they carry the more likely they are to be injured due to the weight load. Today, minimum weights have risen over years past, and California is at the higher end of the national weight scale. If our horses have to carry more weight than other jurisdictions we will lose more horses to an already declining horse population. Generally, I favor an increase in minimum riding weight for nearly all classes or types of races. However, as weight is a handicapping factor, and during certain times of the year and race conditions (stakes races, 3 and 4 year old horses racing against each other), I believe that in certain situations current weight standards may need to be maintained. Again, the planned health study will shed light on this matter and I think we need to seriously consider that not all riders can meet all riding conditions.

Q. How prominent do you think rebating is in California? What can your board do to eliminate this practice?

A. While rebating in California is illegal, I believe it is prevalent in the sense that wagers from California are finding their way to entities that offer rebates to those who place the wager. With the advent of internet wagering and simulcasting, I believe that serious or large bettors are resorting to wagering with "rebate shops", as simply as the name implies they offer higher returns to the serious gambler than conventional betting. Unfortunately, this is not an area that I think we understand well enough, nor do I have confidence in what we do know to appropriately address the issue. Currently, when we approve racing associations' license applications we are provided with a lengthy list of out of state, within state, and out of country simulcast facilities that receive racing signals from California. We are told they do not rebate. However, we do not have the staff to verify that all of these outlets are not in fact participating in rebating and substantially rely on representations of the racing associations that the practice is not taking place. Further study and investigation must be done in this area. We should consider requiring that written representations be mandated from each of the simulcast partners and racing associations before approving the off track betting companies. Additionally, we need to demand more rigorous verification standards from our staff, and interact with national organizations to better understand the full extent of the issue.

Having said this, the only way to eliminate this practice may be to obsolete them by developing a competitive tiered payoff reward system to disincentivize patrons to resort to out of state rebate betting. We are losing huge volumes of wagering dollars in this area, and we should explore and consider a revised take out schedule that would allow us to compete with rebating. I again caution that this is not an issue that has been adequately studied by the CHRB, or me personally, and it must be carefully reviewed before any plan is adopted.

Q. Can the board do anything regarding the issue of offshore wagering?

RICHARD B. SHAPIRO

A. Illegal offshore wagering should be policed and stopped. Offshore wagering steals our betting dollars without providing any return to any of the participants or the State. The CHRB has not studied this fully and therefore has not developed a plan to stop this type of wagering. It needs to do so in conjunction with national organizations including but not limited to Racing Commissioners International, NTRA, USTA, etc. Further, we need the cooperation and assistance of the Attorney General's office, the Legislature, and other governmental agencies to police and enforce this illegal off-shore wagering from occurring. We need to understand who is wagering off-shore and track their activities. As a sidebar to this, we must work with racing publications and other agencies to restrict or prohibit advertising and promotion of these illegal off-shore betting organizations. Racing associations and our staff need to increase their analysis and research to insure that we are not permitting California signals to be provided to these entities.

Of course, should you or any Committee Member have any additional questions, or wish clarification to any of the above responses, I look forward to the opportunity to address them.

Sincerely,



RICHARD B. SHAPIRO

RBS:JH

CÉSAR A. ARISTEIGUIETA, MD

61

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April 22, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Chairman Perata:

This letter is in response to your correspondence of 4/7/2005 regarding my Senate confirmation to the Medical Board of California. I am eager to undertake the confirmation process so that I may continue to serve Californians as a member of this important regulatory body.

Attached please find my responses to the thirteen questions posed by the Committee. Although concise, I hope my answers provide an insight into my perspective on the various issues facing the Medical Board.

Please note that my home address has changed since being nominated by Governor Schwarzenegger. My correct address is reflected on the above letterhead.

Thank you very much for your consideration. Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,



César A. Aristeiguieta, MD

APR 28 2005

Response to questions posed by the Senate Rules Committee regarding confirmation to the Medical Board of California

Cesar A. Aristeiguieta, MD

1. What are your goals and objectives as a member of the MBC?
What do you hope to accomplish during your tenure?

I have been serving those in need for 25 years. My extensive experience in leadership, regulatory affairs, and the practice of medicine will allow me to bring technical expertise and a results oriented approach to the activities of the MBC.

I hope that during my tenure at the MBC I can strengthen our core mission of protecting the public. I have concerns that the MBC is currently involved in a variety of mandated activities that are beyond the scope of the Board. At a time when resources are limited, it is important that the MBC and the legislature consider the value and cost of such activities.

I also aim at establishing a process within the scope of the Medical Board that formally addresses medical errors and encourage health professionals to report them. I am concerned that our disciplinary process may be punishing physicians for systems errors that are beyond their control.

2. What do you believe is the highest priority of the MBC? How should this be accomplished?

I believe that the highest priority for the Board is consumer protection, yet our ability save patients from harm is at risk due to the threat of financial insolvency. Immediate action must be taken to cut costs, discontinue programs that do not further the mission of the Board, and consider adjusting the physician licensing fees.

3. Do you believe the Enforcement Monitor has accurately identified problems confronting the MBC?

I think that Julianne D'Angelo Fellmeth and Thomas Papageorge have done an outstanding job documenting the shortcomings of the

APR 28 2005

MBC; however, these should not be a surprise to anyone that has monitored the business of the Board. Most of the MBC's deficiencies were identified by staff and have previously been debated by the Board.

4. What is your assessment of the monitor's recommendations for improvement? If you agree with the recommendations, what actions do you believe should be taken to implement them? If you disagree, please list your reasons briefly (please identify the recommendations by the numbers used in the report).

I agree with the spirit of the recommendations proposed by the Enforcement Monitor, yet my experience has taught me that there are two sides to every story. For example, recommendation # 56 (feasibility of diversion concept) shows a lack of understanding by the Enforcement Monitor of addictions and professional impairment. Failure to expand and strengthen the current diversion program would reduce public safety, not strengthen it.

The Board has developed an implementation matrix to address each and every recommendation made by the enforcement monitor. We are moving quickly to put into practice the most feasible changes first, while also debating the more complex suggestions.

5. What recommendations do you believe are the highest priority?

Recommendations # 1 (lost of enforcement positions) and # 2 (Renewal fees) need the most prompt attention. The financial stability of the MBC needs to be addressed, along with returning our enforcement staff to previous or even higher staffing levels.

6. Do you agree with this problem [enforcement process takes too long, procurement of essential medical records]? If so, how should the MBC address this issue? How would you recommend that the existing process be improved to resolve any delay?

I agree that the enforcement process takes too long. The MBC places the names of physicians under investigation on the enforcement web site at the moment an inquiry is commenced.

Since it takes over 2 years to resolve most investigations, accused physicians face the loss of business and professional reputation, even if later found not to have committed any wrong doing. This amounts to being considered guilty for over 2 years until proven innocent. It is unacceptable. Swift investigation and administrative action will strengthen the standing of the MBC and public safety.

Some of the delays in enforcement are due to record procurement concerns; however, it is clear that the loss of 25 percent of the enforcement positions is also impacting the process. The MBC has already begun to implement penalties against physicians who fail to timely produce requested medical records. We now need the assistance of the legislature to restore the lost enforcement positions.

7. Do you support the Enforcement Monitor's recommendation that physician license renewal fees should be increased to at least \$800 biennially? If so, why? If not, why?

I support establishing a physician renewal fee that supports the mission of the MBC and restores lost enforcement positions. I also believe that the Board and the legislature need to examine current programs and services. Any expenditure that does not support the intended mission of the MBC should be discontinued, or should be individually budgeted for by the legislature.

8. What changes do you believe the MBC can make, within its existing resources, to address the fiscal problems cited by the Enforcement Monitor?

I would immediately freeze the Physician Loan Repayment program and ask the legislature to fund it with resources other than license fees. I would also ask the legislature to allow the Board to discontinue activities that are carried out by recognized accreditation bodies (medical school and specialty board evaluation). Finally, I would ask the legislature to transfer regulation of Licensed Midwives, Registered Dispensing Optician, Program Research Psychoanalysts and Student Research Psychoanalysts to the Department of Consumer Affairs.

9. Do you favor shifting to a vertical prosecution process? Or, do you believe MBC should retain the “hand-off” process? Please explain briefly.

As a former police officer I can personally testify to the effectiveness of the vertical prosecution model. Every modern law enforcement agency has adopted the process because it fosters teamwork between investigators and prosecutors, and it leads to better and more successful cases. I believe the Board must switch to the vertical prosecution model.

10. What do you believe is the best approach to ensure that the decision-making process is timely for both the public and the physician, as well as accurate and independent [pertaining Division of Medical Quality review of proposed decisions by administrative law judges (ALJ)]?

One of the reasons the MBC is an independent body, separate from the Department of Consumer Affairs, is that the investigation and discipline of medical misconduct is very complex. Physician and public member participation and decision making is needed in the process to ensure public protection and impartial perspective. The Board has a good relationship with our ALJ's and we accept most of their decisions. Occasionally an ALJ may not grasp the complexity of a case and the Board stands as the final authority to protect patient safety. This process should not change.

11. Do you support or oppose giving patients the same access to medical malpractice settlement information as all other stakeholders? Briefly why or why not?

I do not support disclosing medical malpractice claims as it has been previously proposed to the Board. There is no evidence that medical malpractice claims, by themselves, are a good indicator of medical quality. I do have concerns, however, that the Board may possess significant information on physicians that it is not sharing with patients.

One option is for the Board to develop a web site on physician quality that is separate from our enforcement web site. On that site,

the Board could post all information known on a physician, including malpractice claims, along with a users guide for interpreting the information. The MBC could develop criteria common to quality physicians, and even assign a letter grade to each licensee based on the information known to the Board. Because there are several private sector and trade groups with similar physician assessment products, the Board could simply partner with such groups to make the information available through the MBC web site.

The legislature is currently considering asking the Little Hoover Commission to examine this issue. I oppose this proposal, as I believe the Board has sufficient technical expertise and has heard extensive public testimony on the matter. We simply need to move forward with actionable items.

12. Do you believe that the existing disclosure provisions are sufficient to enable consumers to make informed choices when selecting a physician? Are there changes that you would recommend?

Please see the answer to question 11.

13. What steps have been taken, and will be taken, to address the issues raised by the Enforcement Monitor [regarding the diversion program]? Do you have recommendations for improvements? If so, please indicate them.

In your letter, the characterization of the Diversion Program is incorrect. The program diverts addicted and mentally ill physicians from the enforcement program with the goal of rehabilitating them. The program both monitors these physicians and stipulates conditions for treatment and the continued practice of medicine. Physicians who fail to meet the conditions of the Diversion Program have their license suspended or revoked. The Enforcement Monitor found significant flaws in the program and its monitoring component. These cannot be taken lightly.

As a physician I devote a significant amount of my professional activities to assessing and treating addicted patients. As a member of the Board, and its Diversion Committee, I am committed to

preserving and strengthening the program so that impaired physicians are quickly identified and treated, and the public is protected. I have seen first hand the value of the program and want to focus on improving it.

The Diversion Program is woefully understaffed and under funded. The recent appointment of new director will certainly benefit the program. Additional funding is needed to hire monitoring staff and caseworkers. I believe that such funding should come from the physicians who participate in the program. There may also be opportunities to partner with the private sector to provide services to program participants.

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ROOM 113
SACRAMENTO, CALIFORNIA

WEDNESDAY, AUGUST 24, 2005
1:45 P.M.

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2 STATE OF CALIFORNIA

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6 HEARING

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10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 WEDNESDAY, AUGUST 24, 2005

16 1:45 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
28

APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

SUSIE SWATT, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

ALSO PRESENT

DON FISHER, Member
State Board of Education

SENATOR CAROLE MIGDEN

ANDREA BALL
Representing Superintendent of Public Instruction

CHRISTOPHER CABALDON
EdVoice

BLANCHE JONES
Charter Schools

KENNETH WISEMAN, Member
Independent System Operator Governing Board

1 ASSEMBLYMAN JUAN ARAMBULA

2 SENATOR JOE DUNN

3 TIM GAGE, Member

4 Independent System Operator Governing Board

5 ELIZABETH LOWE, Member

6 Independent System Operator Governing Board

7 MASON WILLRICH, Member

8 Independent System Operator Governing Board

9 EDWARD CAZALET, Ph.D., Member

10 Independent System Operator Governing Board

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10 DANIEL PRESS, Ph.D., Central Coast Region; MARIE
11 BARRETT, Colorado River Basin Region; JEFFREY HAYS,
12 Colorado River Basin Region; MAURICE "RED" MARTINEZ,
13 Colorado River Basin Region; ELLEN WAY, Colorado River
14 Basin Region; NANCY WRIGHT, Colorado River Basin
15 Region; JAMES CHAPMAN, Lahontan Region; R. KEITH DYAS,
16 Lahontan Region; HENRY HEARNS, Lahontan Region;
17 SUSAN VAN DAM, Lahontan Region

P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: Our first appointee today is Don Fisher, who is now a Member of the State Board of Education. He's up for reappointment.

The Honorable Carole Migden is here to present him, Carole.

Mr. Fisher, come forward, please.

SENATOR MIGDEN: Thank you very much, Mr. President and Members. I appreciate Mr. Fisher's request that I reintroduce him. I think we were successful last time. This is a reappointment.

It was my pleasure to recommend consideration of confirming the appointment for last time, and Mr. Fisher served with distinction as a Member of the State Board of Education.

He is a very distinguished San Franciscan, a titan in business, a second generation San Franciscan, a self-made gentleman, very involved in educational reform.

We all know that we have distinguished and successful people in our communities. Not all of them choose to step forward and make a life career of philanthropy.

Mr. Fisher and I have been friends for many years. And yes, we're of different parties, and sometimes of different views, but when we come together, it's a dynamo, isn't it, sir. And in this respect, I have long-standingly had great respect for Mr. Fisher and his family. His son John is here today.

There are seven charter schools in California

1 which are directly attributable to the philanthropic efforts
2 that Mr. Fisher has engaged in. As you know, his family has
3 owned and operated the Gap, a self-made gentleman who promised
4 to remodel, Mr. President, his newest clothes to middle-aged
5 women so we, too, can continue to buy the offerings of Gap.

6 [Laughter.]

7 SENATOR MIGDEN: Privately I made this request of
8 him. That's why we have a fast and enduring friendship.

9 Moreover, the gentleman is very active at the San
10 Francisco Museum, the Boys and Girls Club, the Haas Business
11 Council. He was involved in helping -- as a civic leader of San
12 Francisco, I worked with him on the San Francisco Board of
13 Supervisors. I'm proud to have counted on his friendship for 15
14 years.

15 I very much hope on the merits that you will
16 recommend a hearty reconfirmation of Mr. Fisher on the State
17 Board of Education.

18 Thank you, sir.

19 CHAIRMAN PERATA: Thank you, Senator.

20 Mr. Fisher, welcome.

21 MR. FISHER: Thank you.

22 And thank you, Senator Migden. It has been a
23 long time that we've had a relationship, and it's been a
24 wonderful relationship ever since she was a Supervisor in San
25 Francisco.

26 I want to thank you, Mr. Chairman and
27 distinguished Members of the Rules Committee. It's an honor to
28 come before you as a nomination or nominee of Governor

1 Schwarzenegger for reappointment to the State Board of
2 Education.

3 I know you've received a written statement from
4 me in advance, but I wanted to highlight a few things.

5 I was born and raised in San Francisco. My
6 parents were all born in San Francisco, both of them. And my
7 grandparents were born either there or in Grass Valley. So,
8 we've been in California and in San Francisco for a long time.

9 I'm a product of the California public school
10 system. I went to grammar school, junior high school, and
11 Lowell High School, then I graduated from the University of
12 California at Berkeley.

13 Through founding the Gap and my philanthropic
14 endeavors, I know how important it is to have a well educated
15 workforce and citizenry. This is more critical than ever today
16 in the global economy. And I don't know whether you've read the
17 book that Tom Friedman has just written about The World Is Flat,
18 but it brings to all of our attention how important education
19 is, and how fast the United States is running behind India,
20 China, Singapore, some of the European Block countries like
21 Russia and so forth. And I think it's really important that we
22 double our effort to make sure that we are able to provide the
23 kids of this country an education so that they can compete for
24 jobs and compete in the world, because the world is becoming
25 flat.

26 Too many students are not getting the quality
27 public education I was lucky enough to get. Poor minority
28 children tend to go to the worst schools and are taught by the

1 worst experienced teachers, or the less experienced teachers.

2 In 1997, California began putting into place a
3 comprehensive standards based system. Today that system
4 includes world-class standards, and I must say after being on
5 the board for four years, those standards are as good if not
6 better than any standards in the United States. We have tests
7 aligned to those standards and accountability to ensure our
8 students are meeting expectations.

9 Test scores show our students are rising to the
10 challenge, but much work needs to remain to be done to help our
11 lowest performing schools and to further close the achievement
12 gap.

13 The last four years on the board have been very
14 rewarding, and I look forward to the opportunity to serve
15 another term, and to work together to meet our common goals.

16 I also want to say that the Legislature has done
17 a very good job in funding the kinds of things that need funding
18 in the education system today.

19 I also will say that I don't think there's enough
20 funding for education, and I guess maybe that's always the case,
21 but it definitely is the case here in California.

22 CHAIRMAN PERATA: Thank you, sir.

23 Any questions? You have a few, Senator Bowen.

24 SENATOR BOWEN: Just a few. There are just a few
25 questions that I have.

26 One has to do with the No Child Left Behind Act
27 and the standards. The state's had an ongoing problem, as many
28 states have, with trying to align the California standards with

1 the standards or accountability requirements under the No Child
2 Left Behind Act.

3 How do you see the situation now? What remains
4 to be done? And what kind of interaction with other states who
5 are also dealing with this issue has the board had?

6 MR. FISHER: I think the Superintendent, Jack
7 O'Connell, has gone back to Washington with -- and I believe the
8 President of our Board, Ruth Green, to try to set those
9 standards and get the federal government, Department of
10 Education, to agree with what we're doing. And I think that
11 we've made quite a bit of headway in the last six to eight
12 months. I think that we're basically ahead of a lot of other
13 states in the United States in the kinds of standards that we do
14 have.

15 There are problems with the tests that we run
16 compared to the tests that some of the other states have run,
17 but I think that they're all getting accepted, and I think that
18 we're making quite a bit of headway. I know that they're
19 working hard on it.

20 SENATOR BOWEN: One of the things that was
21 brought to my attention was that the State Board has acted to
22 classify teachers on Emergency Permits who are participating in
23 a new internship program under No Child Left Behind. Apparently
24 they're being rated as highly qualified, but that they're not
25 fully credentialed and probably won't be by the end of the
26 '05-'06 school year.

27 Has the board been looking at the question of
28 what happens to districts with teachers who are not fully

1 credentialed by the federal deadline?

2 Much of you your problem right now comes from
3 federal legislation not from us.

4 MR. FISHER: Well, you know, there's a big
5 shortage of teachers in the State of California. And the
6 interim internship that we now have allows those teachers two
7 years to become credentialed. And most of them are working on
8 getting their credentials.

9 I think if they don't have their credentials,
10 then it's up to the district to decide what they do. But that
11 is -- they are competent in their subject matter, and they have
12 college degrees, but they have not been certified as
13 credentialed teachers. And I think that we're working on
14 that.

15 SENATOR BOWEN: Is there anything that the
16 Legislature itself needs to do to further the board's
17 objectives? I mean, I understand more money is probably never
18 looked at with a scowl, but --

19 MR. FISHER: Well, you know, unfortunately, the
20 board has not advanced any legislation since the time that I've
21 been on there.

22 SENATOR BOWEN: I'm not even talking about
23 legislation, but just are there areas where you see that we're
24 just remiss in our policy setting at the state level?

25 MR. FISHER: No. I think that the Legislature's
26 done a very good job.

27 SENATOR BOWEN: I don't think I'll ask anyone
28 else that question. I like that answer.

[Laughter.]

MR. FISHER: I think that you have done a good job.

We had put forth through the EdVoice group an identifier number for every student, because in this state we did not have a way of following the student. There are lots of students with the same name, and if they transfer from one school to another, nobody knows who they are and which ones they are. So, we have an identifier number, and that's been just installed.

It takes quite a while to get a lot of these things executed that get passed. But I think that generally, speaking most of the things that I can identify have been done so far.

SENATOR BOWEN: All right, thanks.

The only other comment is that I noticed in your investment statement that you have some interest A Libras. You're probably the only --

MR. FISHER: In what?

SENATOR BOWEN: A Libras, the used book seller. Probably only online used book seller. Probably the only other person I've ever encountered who even knows what it is.

I'm a regular late night A Libras shopper. I probably have to discuss close that. It's why the UPS truck comes to my house.

MR. FISHER: I'm glad you've educated me on what it was.

[Laughter.]

1 SENATOR BOWEN: If you can't sleep, log on.

2 CHAIRMAN PERATA: Gee, that's encouraging.

3 [Laughter.]

4 SENATOR BOWEN: Get yourself some great classic
5 used books.

6 CHAIRMAN PERATA: Senator Ashburn?

7 SENATOR ASHBURN: No questions.

8 CHAIRMAN PERATA: Senator Battin?

9 SENATOR BATTIN: Move the confirmation.

10 CHAIRMAN PERATA: Senator Cedillo?

11 He's deep in prayer, but he'll be with us in a
12 minute.

13 SENATOR CEDILLO: It's just one of these things
14 that if you start something --

15 CHAIRMAN PERATA: I know.

16 SENATOR CEDILLO: The challenges confronting a
17 state with diversity, demographics, diverse language encompassed
18 in the demographics, a growing divide in the economy -- I can't
19 believe you asked me to do this.

20 CHAIRMAN PERATA: No, he didn't.

21 SENATOR CEDILLO: We had a very pleasant
22 argument -- I mean a very pleasant meeting.

23 [Laughter.]

24 SENATOR CEDILLO: He seems actually acutely
25 sensitive to the challenges of the demographics, the
26 investments, or lack of investment, on behalf of the state, and
27 what confronts us for a better future, including all the
28 challenges having a diverse economy means and a diverse

1 population.

2 So, I was very satisfied. I appreciated his
3 candor and his accessibility. His commitment seems just
4 exemplary. I'm happy to move the motion.

5 CHAIRMAN PERATA: I've followed your work as a
6 fellow Bay Areaan very closely. And everything I've seen you do,
7 I think, is the emphasis that needs to be taken in education.

8 But you pointed out, and we're of the generation
9 we called it grammar school not elementary school.

10 But when you look at your education, and you look
11 at what you've seen today as a member of the State Board, are
12 there obvious differences, the cause and effect? Things were
13 good when you were there, and the public schools are certainly
14 greatly different today than they were when I was in school.

15 We all go to our own experiences as our best
16 reference points, so what do you see?

17 MR. FISHER: There's a tremendous amount of
18 diversity today that there wasn't when we went to school. I
19 looked at the football team at Berkeley when I graduated. There
20 were two blacks on the whole football team.

21 I think that the diversity with the Hispanics,
22 Latino, they're -- 46 percent of the kids in school today in
23 California are Latino. A lot of them don't speak English when
24 they start in, in school.

25 We have totally different challenges today. And
26 there's almost no right answer. We just have to keep plugging
27 away. I don't think it's black and white that gives you the
28 answer as to what to do. We have to keep plugging away. There

1 are some things that are right for some kids, and other things
2 that are right for other kids.

3 When I was in school, I felt that teaching was a
4 much more respected profession than it is today. And I think
5 that's a big mistake.

6 Teachers today last for five years on an average,
7 and I think when we went to school, the teachers lasted a
8 substantially longer period of time.

9 I was fortunate enough to go to Lowell High
10 School, which is still one of the premier high schools in the
11 United States. When I went there, I don't think that there was
12 any diversity to speak of. Maybe five percent of the school was
13 diverse. Today it's -- I think they're 50 percent Asian in that
14 school.

15 So, there's whole different dynamics as to what's
16 happening in the education profession. And the kids that are
17 going to school today are quite different. There are different
18 challenges than we had when we were in school. And I think we
19 have to meet those challenges, and it's sort of -- I don't say
20 fun, but it's a challenge to us, to me, to try to figure out how
21 to do it.

22 Senator Migden mentioned about the KIP schools
23 that we've started. We have 48 of those schools in the United
24 States that are charter schools. It's the leading charter
25 school organization in the country; 95 percent of the kids in
26 those schools are free and reduced lunch in Title One. And
27 we're trying to prove that those kids can learn as much as white
28 kids can learn. And the kinds of results that we're getting

1 prove that they can.

2 Now hopefully, the public school system will take
3 some of the things that we're doing and try to do the same
4 things. Arlene Ackerman in San Francisco has started the Dream
5 Schools, which are a knock-off of the KIP Schools, which is
6 great. They have longer school hours; they wear uniforms; the
7 principals have more responsibility than they do in normal
8 schools, and so forth. So, that's the kind of thing that I'm
9 working on, and I just hope that we can have some kind of impact
10 on this large, large group of kids that go to school in this
11 country.

12 CHAIRMAN PERATA: It's a good answer.

13 MR. FISHER: A little long.

14 [Laughter.]

15 CHAIRMAN PERATA: No, no. I've heard a lot
16 longer here that said a lot less.

17 The other question is not a question. I've heard
18 the Superintendent of Public Instruction frequently speak
19 eloquently about the lack of adequate funding, which as you
20 point out, is part of the problem.

21 But I hear less about a couple things you said.
22 First of all, that there is not a way to fix this problem.

23 And second, there is no question that a lot of
24 the templates that we use today that were established about the
25 time that Prop. 13 really shifted the emphasis from local to
26 state, those templates are really worn pretty thin.

27 And I would just encourage, both as a board
28 member and as the Superintendent, that the bully pulpit be used

1 to talk about it. You can speak not only with facility, but
2 somewhat courageously to talk about a KIP School, and how there
3 are things there that could be applied, not necessarily
4 statewide in California, but could be applied to public
5 education.

6 And I would encourage more of that to go on,
7 because we can all agree that we need to fund more, but people
8 feel better about that if they have, and you see this when local
9 school district pass bonds or sales taxes, they feel a whole lot
10 better if they view the money being spent in a way that is
11 meeting the challenge. At least from my constituents, I hear
12 frequently that they don't think that's the case.

13 I'm just grateful that you're willing to do this.
14 It may to be a thankless job, but it's probably right up there
15 with those. Ours is thankless, but we get paid.

16 So, I just would like to commend you for your
17 work. I don't know if John's here to speak for or against you,
18 but you're welcome to be here, John. And thank you for your
19 interest in our community.

20 Anybody here that would like to speak in favor of
21 the renominee?

22 MS. BALL: Thank you, Mr. Chair and Members.
23 Andrea Ball on behalf of the State Superintendent, Jack
24 O'Connell. He's out of the city traveling or he would be here.

25 You have a letter of support.

26 CHAIRMAN PERATA: We do.

27 MS. BALL: The Superintendent is in strong
28 support of Mr. Fisher's reappointment. He's been an invaluable

1 member of the board.

2 Thank you.

3 CHAIRMAN PERATA: Thank you.

4 MR. CABALDON: Thank you, Mr. Chairman. I'm
5 Christopher Cabaldon on behalf of EdVoice, the network of Mr.
6 Fisher's colleagues in the education planning for the free
7 world, and about 20,000 other Californians.

8 I just wanted to vouch for his -- not just his
9 work on the state board, but the connections that he's made in
10 the rest of California public policy on behalf of schools.

11 We haven't talked about facilities today because
12 we've gotten \$30 billion of additional school construction
13 dollars as a result of Prop. 47, Prop. 55, and Prop. 39, none of
14 which would have happened if it weren't for the advocacy of
15 Mr. Fisher. So, a major contributor to the success of schools
16 in the state.

17 Thanks.

18 CHAIRMAN PERATA: Thank you.

19 MR. JONES: Mr. Chairman, Members, Blanche
20 Jones, on behalf of the Charter Schools Association.

21 We believe Mr. Fisher has done a great job on the
22 state board and strongly support his reappointment, if the
23 Senate decides to do that. So, we encourage you reappoint him.

24 CHAIRMAN PERATA: Thank you.

25 Anyone here in opposition?

26 You look like a pretty intelligent group.

27 With that, we have a motion to approve. Call the
28 role, please.

1 SECRETARY WEBB: Ashburn.

2 SENATOR ASHBURN: Aye.

3 SECRETARY WEBB: Ashburn Aye. Bowen.

4 SENATOR BOWEN: Aye.

5 SECRETARY WEBB: Bowen Aye. Cedillo. Battin.

6 SENATOR BATTIN: Aye.

7 SECRETARY WEBB: Battin Aye. Perata.

8 CHAIRMAN PERATA: Aye.

9 SECRETARY WEBB: Perata Aye. Four to zero.

10 CHAIRMAN PERATA: Congratulations.

11 MR. FISHER: Thank you.

12 CHAIRMAN PERATA: Senator Cedillo.

13 SENATOR CEDILLO: Aye.

14 CHAIRMAN PERATA: It's unanimous.

15 Ken, come on up, sit down. I'm sorry everybody
16 left. I thought they were here for you.

17 [Laughter.]

18 CHAIRMAN PERATA: Kenneth Wiseman is a member of
19 the ISO, Independent Systems Operator Governing Board, up for
20 reappointment.

21 I'd like you to make opening remarks, if you
22 would.

23 MR. WISEMAN: If I might, Senator, I'd first like
24 to introduce part of my family that's here.

25 CHAIRMAN PERATA: Smart guy.

26 MR. WISEMAN: I was a staffer in this building 32
27 years ago when I was fortunate enough to meet a summer intern in
28 the Governor's Office, who is the best thing that ever happened

1 to me. I introduce to you my wife, Justice Rebecca Wiseman from
2 the Fifth District Court of Appeal.

3 CHAIRMAN PERATA: Welcome.

4 MR. WISEMAN: And one of the best things we did
5 together was our daughter, Vanessa, who is here, just graduated
6 from the University of California at Berkeley. And the best
7 part is that she has a job in Sacramento, so we are thrilled.

8 And to my left I introduce my long-time friend,
9 Juan Arambula.

10 CHAIRMAN PERATA: Who's going to introduce you.

11 MR. WISEMAN: Exactly, yes.

12 CHAIRMAN PERATA: Sorry, I got it just backwards.
13 Welcome.

14 ASSEMBLYMAN ARAMBULA: Good afternoon. Thank you
15 for the opportunity. It's a pleasure to introduce a long-time
16 friend and associate, Mr. Ken Wiseman.

17 Ken and I have worked together, crossing party
18 lines, for well over ten years in the Fresno area. I believe
19 that Ken will make an excellent -- will continue to be an
20 excellent member of the ISO Board.

21 He and I have worked together to solve problems
22 at the local and regional level. He is a Republican who has not
23 hesitated to cross lines --

24 CHAIRMAN PERATA: I didn't know that.

25 SENATOR ASHBURN: That may not have been the best
26 introduction.

27 [Laughter.]

28 ASSEMBLYMAN ARAMBULA: Ken has never hesitated to

1 support good people, regardless of political persuasion, and he
2 has always had -- we've worked together on a number of issues,
3 amongst them the Regional Jobs Initiative whose task is the
4 economic development of the Central San Joaquin Valley.

5 He also worked with me on issues involving
6 workforce preparedness with the Workforce Investment Board.

7 I am convinced that Ken will always step up and
8 do the right thing, and I would very much like to introduce him
9 to you and ask for your consideration for his
10 reappointment.

11 CHAIRMAN PERATA: Thank you, sir.

12 MR. WISEMAN: Thank you, Juan.

13 Chairman Perata, Members of the Senate Rules
14 Committee, I'm honored to have the opportunity to address you
15 today relative to my appointment to the California Independent
16 System Operator. And it's very nice to look up here and see
17 many of your staff people are staff people that I worked with a
18 long time ago, actually when Senator Ashburn and I were staffers
19 together as well.

20 So, by way of background, I was raised 20 miles
21 down river from Old Sacramento, near a small community called
22 Cortland. After I graduated from UC Davis, I spent five years
23 as a legislative staff person in this building, the last two as
24 Chief of Staff to Senator Peter Behr from Marin County.

25 I've spent most of the remainder of my career
26 working in the Central Valley's agricultural and food processing
27 industries, and I also served in 1992 as the first
28 Undersecretary of the newly formed California Environmental

1 Protection Agency.

2 Fortunately or unfortunately, depending on how
3 you look at it, life brought me into the energy arena in 1998,
4 when I was appointed to the first ISO Board as one of four
5 consumer representatives. I represented agricultural and water
6 users. It was then a 26-member stakeholder board, appointed by
7 the California Electricity Oversight Board.

8 I'm proud of many of the accomplishments that
9 original ISO Board made during the first years of operations.
10 We pioneered new ways to open up the power grid for the benefits
11 of all consumers.

12 Sadly, during the energy crisis, the ISO was
13 placed in the position of managing over one-third of the
14 wholesale electricity market when it had been designed to manage
15 five percent or less of the balancing market.

16 I assure you that I am humbled by that
17 experience. I learned a great deal from it, and I have a strong
18 commitment to not repeat the mistakes of that past.

19 As you know, I'm now serving as Chair of the
20 Board and am closely working with my board colleagues to oversee
21 ISO management. We recently hired Yakout Mansour, a
22 world-reknown transmission expert, as the new CEO of the ISO.
23 Working closely with Yakout, last month we concluded a 90-day
24 in-depth evaluation of the ISO organization from a cost and
25 efficiency standpoint. This process resulted in an immediate 15
26 percent cost reduction for next year, with firm plans to achieve
27 a 30 percent cost reduction by 2010. That will make the Cal
28 ISO's grid management fee the lowest ever and ultimately we will

1 be the lowest in the nation.

2 The realignment included management as well as
3 line positions, and was aimed at increasing efficiency and
4 eliminating duplication. The process was very difficult, and
5 approximately one hundred positions were eliminated at the ISO.
6 I believe we owe it to the people of California to provide
7 consumers with the best service at the least cost. That is my
8 goal, and I believe the realignment is proof of our commitment.

9 California's building 200,000 new homes every
10 year, most of which are in our warmer inland valleys. All these
11 homeowners have an expectation of lights and air conditioning.
12 The ISO has to be proactive so that we can build and improve
13 transmission where needed, just like we did this past year by
14 opening Path 15, which provided the reliable transmission that
15 has kept the lights and air conditioners on during record high
16 temperatures that we've experienced this summer.

17 The ISO must continue to do its part to further
18 the state's overall energy goals, including working with the
19 California Public Utilities Commission on resource adequacy
20 rules, as well as furthering other state goals, such as the
21 renewables portfolio standard, conservation, and energy
22 efficiency. We are very proud the California ISO leads the
23 nation with respect to integrating renewable energy resources
24 into the wholesale energy market.

25 Finally, let me repeat that I am first and
26 foremost committed to protecting the interests of all California
27 consumers. This includes ensuring that the grid is run safely,
28 reliably, and also that the limited wholesale markets the ISO

operates have effective oversight and monitoring.

As I learned early on in my career while trading agricultural commodities, there will always be people trying to take advantage of the rules to gain an edge. I assure you that if I am confirmed, I will make every effort to see that any wrong doing is met with severe punishment, and that the lights in California are kept on in the most economical and efficient way possible.

I ask that you support my confirmation, and I look forward to your questions.

CHAIRMAN PERATA: Thank you.

Senator Dunn, would you like to come up here and replace Juan.

SENATOR DUNN: I'll edit his comments some more, Mr. Chair.

Thank you, Mr. Chair and fellow Members. It's an honor to be here before you, unfortunately in the unenviable position of opposing this nominee. Let me share some comments in that regard.

First and foremost, I heed the warnings of our former colleague, Senator Ross Johnson, who throughout the Davis administration would have preferred to oppose virtually every single nominee that Governor Davis put forth. But he consistently made speeches on the Floor that said, when duly elected, a governor is entitled to his appointees that reflect the philosophical position of that duly elected governor. And Senator Johnson was absolutely and still is absolutely correct about that.

1 This Committee is well aware that if it was a
2 debate over philosophy, I would be screaming bloody murder at
3 every single one, virtually, of this Governor's appointments
4 with respect to anything in the energy field, including
5 Mr. Wiseman, on philosophical grounds, whom I consider to be
6 more pro-deregulation than what California needs. You all know
7 my view on that one. I'm not here to repeat them once again.

8 But Senator Johnson also said that when a nominee
9 is put forth that has a track record that shows that that
10 nominee cannot perform the tasks that he is obligated to do in
11 the given position, then despite the philosophical difference,
12 opposition must truly be registered. And albeit reluctantly, I
13 think that's the situation before this Committee today.

14 Assembly Member Arambula stated that Mr. Wiseman
15 will step up and "do the right thing," quote-unquote.
16 Mr. Wiseman has a track record in energy that I want to talk
17 about, because that track record shows that, unfortunately in
18 this arena, he failed time and time again to step up and do the
19 right thing.

20 It doesn't mean that I wouldn't support
21 Mr. Wiseman for many positions throughout the variety that any
22 given Governor has. I would. But not this one.

23 In this case, Mr. Wiseman is the wrong person for
24 the wrong place at the wrong time.

25 This Committee is well aware that the ISO has an
26 unique legal position in California. We all know it's a
27 nonprofit, but what most don't know is that it is a public
28 nonprofit. That is a rare animal. And what it means is that

1 that public nonprofit corporation's first and primary obligation
2 is to the people of California, no one else. Not market
3 players, not political friends, but to the people of
4 California. That's what makes a public nonprofit unique.

5 So, the key question before this Committee for
6 any ISO nominee board member is whether in fact that nominee
7 will or has proven that he can protect the people of California,
8 specifically the California energy consumers in this particular
9 context. Let me touch upon that record for a moment.

10 As you are already aware, Mr. Wiseman was on the
11 previous 20-some-odd member what was called Stakeholder Board of
12 the ISO at the outset of and during the early stages of the
13 California energy crisis. That was disbanded in early 2001 for
14 what we call the Governor appointed board that now exists.

15 Most of you are now aware of the infamous event
16 that happened at the ISO on December 8th, 2000 -- I have called
17 it for years the Palace Coup -- in which the CEO, who serves
18 directly under the board members and of course is responsible to
19 the board members, went to FERC on an emergency filing on Friday
20 afternoon, December 8th, 2000, and asked FERC to take away ISO's
21 price cap authority.

22 That single act condemned the State of California
23 to the electricity crisis that is now infamous. That single
24 act. And there are few who dispute that, except Mr. Winter.
25 Most of the 26 board members agree with that. In my personal
26 meeting with Mr. Wiseman, he agreed. And he was angry that
27 weekend when he discovered the actions of Mr. Winter.

28 So, why do I raise that if he said he was angry?

1 Because he was a board member and took absolutely, positively no
2 actions against Mr. Winter the following business day, none. In
3 fact, Mr. Winter sat in that position for several years after
4 that.

5 That inaction by that stakeholder board, every
6 single member of that stakeholder board must account for their
7 lack of action to the people of California, every single one,
8 because not a one, including Mr. Wiseman, did anything about
9 Mr. Winter's Palace Coup.

10 About a year or two ago, Mr. Winter retired. He
11 retired with a multi-million dollar golden parachute at
12 ratepayer expense. Mr. Wiseman supported that.

13 I had said for years Mr. Winter should simply be
14 fired. But with full knowledge that Mr. Winter committed a
15 Palace Coup that condemned us, Mr. Wiseman voted for a multi-
16 million dollar golden parachute for Mr. Winter.

17 Price caps in the summer of 2000 were a hotly
18 debated issue in front of the stakeholder ISO board. And as you
19 all know, there were many groups vying for and against price
20 caps, for and against certain levels. It primarily shook down
21 to the consumer oriented groups versus the generator community.
22 Not exclusively, but primarily.

23 I want to touch upon those. Although I know this
24 has been made available to the Committee, but it is important to
25 lay it out publicly here.

26 On June 28th, 2000, in response to gaming the
27 system, and out of control prices in certain locations in
28 California, a \$250 price cap proposal was made before the ISO

1 board. Mr. Wiseman voted against that price cap. It failed. A
2 double of that price cap, \$500, which was supported by the
3 generator community, was subsequently moved. Mr. Wiseman voted
4 for that one. It passed.

5 A few days later on July 6th, he once again voted
6 against a \$250 price cap that was made by the consumer
7 community. The motion failed.

8 Why did I raise this second one? Because at the
9 time of the vote, he commented, and I quote, "The only thing
10 wrong with the market is the undue political interference of the
11 command and control warrior of the past," end quote. He knew
12 that statement was flatly wrong, because at that time the ISO
13 and its Market Surveillance staff were well aware of the
14 extensive market manipulation that was ongoing in the market,
15 giving rise to a dysfunctional market, and thus prices out of
16 control. He knew that when he made that statement.

17 On August 1st, 2000, he abstained from a vote on
18 a \$250 price cap that was pushed by the consumer community. The
19 motion passed despite his abstention.

20 On October 4th, 2000, another consumer sponsored
21 what is called the Energy Price Cap Proposal, Cost-based Energy
22 Price Cap Proposal, was voted on and failed. Mr. Wiseman wasn't
23 there for that vote.

24 We all miss votes. I understand that.

25 That same proposal came up later that month,
26 October 26th of 2000. It passed. That, by the way, was the
27 vote that caused Terry Winter to go to the FERC and commit the
28 Palace Coup on December 8th. Once again, on a

1 consumer-sponsored price cap proposal, Mr. Wiseman wasn't there.
2 Every single price cap control sponsored by the consumer
3 community, he was either absent or voted against. Every single
4 one sponsored by the generator community he supported.

5 Now, he said in his opening statement, "I am
6 humbled by the electricity crisis and I have learned." And
7 that's fair. We all live with errors of the past, and many at
8 that time weren't quite sure what was going on, although it's
9 crystal clear now, and it was crystal clear to some then.

10 So, let's examine what has happened more recently
11 under Mr. Wiseman's leadership at the ISO. Early this year,
12 early '05, under his chairmanship, a proposal was made to FERC,
13 a proposal that frankly I believe the entire ISO ought to be
14 ashamed of. It submitted a proposal to FERC to allow FERC to
15 pre-vet any single ISO nominee by a sitting governor prior to it
16 coming before this Committee or, if it passes this Committee, to
17 the Floor of the Senate.

18 Let me restate that. Mr. Wiseman sponsored a
19 proposal submitted to FERC by ISO that allows FERC to pre-vet a
20 nominee by a governor to the ISO before this Committee ever gets
21 its hands on it. That has now been adopted, thank you to the
22 ISO Board.

23 In March of this year there was a rather
24 significant event of market manipulation by Powerex that, to be
25 honest, for most of us was discovered quite accidentally. Thank
26 you, Senator Bowen. It is one of many instances of market
27 manipulation. I'm not suggesting it's isolated. The market
28 manipulation has never stopped. Its intensity certainly has

1 leveled off.

2 But why do I raise the Powerex situation? I
3 raise it because it is a very significant event in the manner of
4 the market manipulation. But most importantly because of the
5 lack of an aggressive response by the ISO. ISO's response has
6 been identical to its response in 2000: Well, you know, we only
7 get authority from FERC, and we're not sure if FERC gives us
8 authority, and maybe we'll go ask for authority, et cetera, et
9 cetera, et cetera.

10 You know what? There's some merit to that, but
11 as I explained to Mr. Wiseman when he and I met, perhaps the
12 strongest weapon you have is the bully pulpit of the ISO. Not
13 Mr. Wiseman nor anyone at the ISO has talked about this to the
14 press, has screamed from the mountain top about market
15 manipulation that is still ongoing.

16 The first incident of market manipulation, early
17 on in de-regulation was in May of 1999, called the Silver Peak
18 incident. It was actually discovered, I believe, by the
19 then-existing PX, not the ISO. This was a situation in which
20 Enron was creating artificial congestion, and some say they made
21 almost \$10 million off of a single instance of artificial
22 congestion. The PX caught them at it, investigated, and issued
23 a penalty of \$10,000. Ten thousand dollars.

24 Every one of the energy representatives that we
25 interviewed or deposed during the course of our investigation we
26 asked about the Silver Peak incident. And every one responded
27 the same way: Had the PX come down hard on Enron at that time,
28 all of us would have taken note and would have avoided the type

1 of market manipulation that we saw throughout 2000 and the first
2 half of 2001. All that the PX needed to do was make an example
3 out of the Silver Peak incident, a very public example. They
4 didn't.

5 Mr. Wiseman and this ISO Board has failed again
6 to heed that warning of the energy executives themselves in
7 market manipulation that is ongoing today.

8 Which brings me to the conclusion. I reiterate
9 that I would support Mr. Wiseman for almost any other position
10 for which he may be nominated. But on this one, Mr. Wiseman has
11 a track record, and it's a track record that is not in
12 compliance with the legal obligation of a public nonprofit: to
13 act in the interests of the California energy consumers.

14 It's a track record that he has also not learned
15 from, for the ISO under his direction has continued in the same
16 laissez-faire, nonaggressive approach as the stakeholder board
17 prior to 2001.

18 I started with this and I'll end with this. He's
19 a very decent man, no question about that. But for this
20 position he's the wrong person, wrong place, wrong time.

21 Thank you, Mr. Chair, fellow Members.

22 CHAIRMAN PERATA: Thank you, Senator.

23 I think, Mr. Wiseman, I'll just let you respond
24 after we've had our own little discussion.

25 SENATOR BOWEN: Actually, probably he gets a
26 chance to respond via my questions, many of which are about some
27 of the things that were just laid out.

28 I think, first, it's really important to note how

1 small the audience is for this hearing.

2 CHAIRMAN PERATA: Small but powerful.

3 SENATOR BOWEN: Small but powerful, but it is
4 indicative of a problem that we all face with public policy in
5 this area, which is that it's complicated, it's obscure. It
6 takes a lot of time to get into it and understand it.

7 The impacts on any single individual or most
8 businesses, other than maybe an aluminum processing plant or a
9 cement plant, are fairly small. But overall, the impact,
10 collective impact, is enormous.

11 And yet, you'd see an enormous number of people
12 coming up to talk about testing standards in education, or about
13 the minimum wage.

14 And this issue of electricity prices and rate has
15 so much greater an impact on our economy than any minimum wage
16 bill that we could possibly imagine passing.

17 But it means that I think we have to be
18 especially cognizant of creating ways to at least bring those
19 few groups that represent consumers, and those businesses who
20 are paying attention, into the process in a very public way.
21 And that's sort of a preliminary comment.

22 Let's deal with the past before we deal with the
23 present. As Senator Dunn noted, several times in 2000 you voted
24 against imposing price caps as a way to control the market when
25 FERC refused to intervene and basically was telling California
26 that we had created our own problem and should solve it by
27 ourselves.

28 Can you explain why you thought that was the

1 appropriate course of action?

2 MR. WISEMAN: Yes, Senator.

3 I think that the balance that we were always
4 looking for was how do we protect consumers, at the same time
5 attract adequate generation?

6 I have never not supported price caps. I don't
7 believe that we totally de-regulated electricity or that we
8 can.

9 I think that as we looked for what was the right
10 balance to protect consumers, keep the lights on, versus attract
11 generators. The debate, which was very close on the stakeholder
12 board, often within one vote of each other, I was a consumer
13 representative. I represented farmers and water users. And it
14 was often within one vote: was it right at 250? Was it right
15 at 500? How do we get it right? Where is that balance? That's
16 what the debate was about.

17 When the board lost its compass and, in effect,
18 couldn't even agree what time it was or what day it was, I had
19 volunteered to resign, saying, "I don't think this is any longer
20 an independent stakeholder board." The board actually said,
21 "Stay. Wait until we can replace you."

22 And it was very frustrating because we were not
23 debating the issues on the merits, but it got into, as Senator
24 Dunn quoted, a very political command and control, and the
25 independence and purpose of the board, I thought, had lost the
26 advantages that consumers had.

27 This was, you know, the people who were
28 supporting the 250 were some of the consumer groups with some of

1 the investor-owned utilities, which was just --

2 SENATOR BOWEN: Could you translate the \$250 and
3 \$500 price caps into cents per kilowatt hour, and then compare
4 that to what a typical consumer would see in their baseline
5 cents per kilowatt hour rate, or in a typical contract for
6 baseline generation?

7 MR. WISEMAN: I can't.

8 I can tell you that I, when I came to the --

9 SENATOR BOWEN: Wait. I know you can --

10 MR. WISEMAN: Oh, you can try.

11 SENATOR BOWEN: No, no. How much a kilowatt hour
12 is \$500 a megawatt hour? That's all I'm asking.

13 MR. WISEMAN: I'm not -- I don't have my
14 conversion chart in front of me. I am not the technical person
15 to answer that question.

16 And that's probably why I was elected Vice
17 Chairman of the original ISO. I came there with the perspective
18 of a farmer from Kern County who wanted to figure out how to
19 balance demand and supply, and get cheaper electricity. And
20 because I didn't have a stake, I didn't represent -- most of the
21 folks that were on that board were heavily involved in the
22 industry, I think that's the reason they elected me Vice Chair,
23 because I was trying to bring people together to find solutions.

24 SENATOR BOWEN: Really, I'm actually very
25 surprised. How can you deal with understanding the impact of
26 price caps if you don't know the relationship between the level
27 of where the market is at 250 or 500 compared to what the record
28 level at a functioning market is?

1 MR. WISEMAN: Senator, we looked at all kinds of
2 statistics. We have --

3 SENATOR BOWEN: I'm not talking about
4 statistics. This is just, you know, \$250 a megawatt hour is
5 250.

6 MR. WISEMAN: Right, and at 250 --

7 SENATOR BOWEN: That's all I'm asking.

8 MR. WISEMAN: Lots of statistics said we're not
9 going to attract people to build new generation --

10 SENATOR BOWEN: That's not what I'm asking.

11 When were talking about price caps at 250 or 500,
12 how does that compare to what kind of rates you would see in a
13 normal market?

14 MR. WISEMAN: Off my head right now I couldn't
15 tell you that. I could have when I did that seven years ago,
16 but I have not --

17 SENATOR BOWEN: You're the Chair of the ISO, and
18 you don't know the typical cost of a kilowatt hour of
19 electricity in a long-term contract? Please tell me that's not
20 true.

21 MR. WISEMAN: Senator, I will not put myself in a
22 position where I would try to claim that I am a technical
23 expert. I am here, saying that I can, as an MBA trained in
24 economics, I can look at a situation and try to make a value
25 judgment on behalf of consumers. That's what I did.

26 I did not bone-up on kilowatt pricing.

27 SENATOR BOWEN: It's really not a trick question.
28 It's really not.

1 I don't know how you made judgments about how the
2 market's functioning as you look at the pricing in the markets
3 that you've referred to -- the day-ahead market, the peak
4 market -- if you don't know what a typical electricity price is,
5 and what the level of magnitude changes when you're talking
6 about --

7 MR. WISEMAN: I look at market reports. I talk
8 to other boards members who are experts in the area. And I
9 depend on a staff that's very diverse and one that we seek to
10 bring out all the different options when they come, just like
11 your staff does to you with options: here's the pros and cons;
12 here's the analysis.

13 SENATOR BOWEN: I guess I'm asking this because
14 when you're considering a price cap, as you did, of 250 or 500,
15 and you're considering what action to take, what's your baseline
16 for figuring out whether the market is functioning?

17 MR. WISEMAN: My baseline was, our market experts
18 that were at the ISO recommending that \$500 was the price that
19 would be better to attract adequate energy supplies, where our
20 operators were concerned that the lights were going to go out,
21 where Mr. Winter did the famous deed because he was concerned
22 there wasn't adequate power. Did not come to the board. That
23 was inappropriate because the debate was raging whether 250 or
24 500 was the right price.

25 SENATOR BOWEN: What was your role? What was the
26 role of the ISO Board in that December 2000 trip to Washington,
27 when Terry Winter asked the FERC to lift what was then a \$250
28 price cap?

1 MR. WISEMAN: My role was, the day after getting
2 the call from Mr. Winter and telling me that he had done it, I
3 remember being at my home office, and the absolute chill that
4 came over me when he told me he'd done that. And I wished,
5 obviously, that he hadn't. And it also saddened me because the
6 board was dysfunctional and not serving the best interests of
7 California.

8 And if the CEO did that today with this board, I
9 can guarantee you, he would be fired within the hour.

10 SENATOR BOWEN: That's going to be my next line
11 of inquiry. What is the current relationship between the staff
12 and the board in terms of whether you would know about something
13 like that before it occurred?

14 MR. WISEMAN: Certainly that was a key component
15 of hiring a CEO that would communicate with the board. We are a
16 five-member board. Most boards I've been on are seven to nine
17 members, so it's even more important that we be engaged.

18 You'll meet the other board members here today.
19 It's one of the most engaged boards I've been in. I have been
20 at the ISO on average a day a week as we've gotten our
21 analysis. We're getting the organization up as we're trying to
22 make sure that we communicate, that we're on top of our
23 management team, that we are an engaged board.

24 And so, I think I can say to you -- and Mr.
25 Mansour whom I know you've met, the idea was to say, "We can't
26 have that kind of a relationship with our management."

27 We have changed some management. We are out,
28 building a new organization. It's -- it is the responsibility

1 of the board to be accountable. And as I said earlier, the
2 stakeholder board became dysfunctional.

3 SENATOR BOWEN: How is the board going to know
4 when it needs to go to the Federal Energy Regulatory Commission
5 to get action on a market manipulation matter? What kind of
6 benchmarks will the board be using, or does the board currently
7 use, to evaluate whether the price of electricity is just and
8 reasonable, as required by federal law?

9 MR. WISEMAN: The relationship obviously we have
10 with FERC as our regulator, one that there's been lots of
11 litigation over as to our independence, and California's board
12 is more independent. No other ISO board has the Governor
13 appointing and the Senate confirming. And so, I think you have
14 an independence of board members that can ask the questions of
15 our staff that are constantly -- and empowering our staff to be
16 independent, to constantly monitor.

17 And any time we see, as we did in the incident
18 that Senator Dunn cited, where it appeared that there might be
19 some gaming going on, that we quickly moved to stop it,
20 notifying FERC immediately, amending our tariff in an emergency
21 order so we could get the enforcement powers to change it.

22 Ultimately FERC still has the jurisdiction to
23 tell us whether we'll get a rebate, or how much enforcement
24 we'll get. We're waiting to hear on that.

25 But I think, as I said before, any time you see
26 the need -- you see somebody gaming, you need to send a strong
27 signal. And Senator Dunn's right; people didn't get the right
28 signal from the PX. And this board would always want to send a

1 strong signal.

2 SENATOR BOWEN: I understand that the board has
3 referred the incident in I believe it was March, February or
4 March, to the FERC.

5 What kind of a case is being made on an ongoing
6 basis for market relief? This, of course, I would back drop of
7 a concern that I'm sure you understand, that California
8 ratepayers are overwhelmingly mistrustful of FERC's ability and
9 commitment to protecting them when there is inappropriate
10 behavior in the market.

11 We're dealing with an agency that didn't take
12 action, didn't take action, didn't take action. And then when
13 it did take action, said well, we're only going to go back to
14 the date of the official filing of a complaint, even though
15 everyone admits that there was market manipulation before that.

16 So given that, two questions. One is, how fast
17 are you filing a complaint, because the filing date of the
18 complaint is going to determine whether or not, if there is
19 market manipulation, ratepayers get any money back.

20 And then second, how are you following up? What
21 is your process with the public so that those ratepayers who are
22 following the issue can keep track of what's happening at FERC
23 with regard to allegations of gouging or market manipulation?

24 MR. WISEMAN: I think to the first part of your
25 question, absolutely, yes, as quickly as possible. I know in
26 this instance, we had discussed as a board what can we do; can
27 we do it faster; why do we even have to wait to file a tariff.

28 And we found that that was, again, FERC had the

1 option to tell us, well, you will file a tariff and tell us what
2 rule you want changed.

3 SENATOR BOWEN: The tariff is different from the
4 market manipulation allegation. The tariff is your rule that
5 allows you to take certain actions.

6 MR. WISEMAN: But the ability to change our
7 tariff, to stop the market manipulation as opposed to having
8 FERC issue a cease and desist, which would have been great if
9 they would have done it, but they chose not to do that. So, we
10 quickly crafted the regulation to stop it, and it did stop.

11 And then it was to say, okay, how big was this?
12 It looked like it was 18 million, and maybe 6 million at risk of
13 being gamed.

14 And we're waiting for FERC to tell us, okay, is
15 that the number? Was it a game? And can we get our money back?
16 And that's in line with our regulations.

17 As far as how we communicated, obviously when we
18 filed to make the change, there was some communication that went
19 out. We briefed staff in this body as well as in the federal.
20 Senator Feinstein has always been interested in knowing what's
21 going on. So, I know that there was at least discussions of it.

22 As you and I talked earlier, could there be
23 better communication about this to make people aware and to use
24 the bully pulpit in a stronger fashion? Probably could.

25 SENATOR BOWEN: Is there any procedure, rule, or
26 process at the ISO by which the ISO uses a public notification
27 process to quickly alert ratepayers of the potential that
28 there's a market game or a manipulation going on?

1 While it's appreciated that there was a briefing
2 to staff here and in various other places, you know, as you
3 probably know, I found out about this allegation because someone
4 asked a question at the California Manufacturers and Technology
5 Energy Retreat; otherwise, I wouldn't have known about it.

6 So, I'm certain that ratepayers, most ratepayers
7 or ratepayer groups who aren't spending a lot of time following
8 everything that goes on at the ISO had no way of finding out,
9 nor do they have any way of tracking it.

10 Do you publish or make available, if you're
11 concerned about names, at least a redacted version without names
12 of what's going on, and when?

13 MR. WISEMAN: Certainly. In our filing, and
14 that's all public on our web site, the information minus any
15 confidential information.

16 We also work very hard to have good press
17 relations. We have an excellent outreach department, an
18 excellent web site.

19 There was, as I recall, some minor press on this,
20 so it did not get picked up in a major way.

21 You know, one thing that the person -- when you
22 were and I were on that panel at the Manufacturers Association,
23 the person who was a former stakeholder board member felt that
24 she had not gotten a proper process. I immediately scheduled a
25 meeting with management so that she could get her questions
26 answered, so she could get satisfaction, so we could have that
27 kind of a process.

28 I'm very interested in making sure we're as

1 transparent as possible.

2 SENATOR BOWEN: I'm really looking for a process
3 that doesn't depend on a particular person jumping up and down
4 and screaming bloody murder.

5 I'm looking for a process for reporting potential
6 market manipulation or games that executes itself, that is a
7 part of your routine business operation, and where someone
8 doesn't have to come in and say, I don't have any way to get
9 redress, and where you as the President have to set up a
10 specific meeting that then only deals with that one person's
11 concerns.

12 And again, the goal here, given how few people
13 follow this, and how complicated it is, is to make
14 accountability as easy as possible for those few people who are
15 crazy enough to actually pay attention to what's going on in the
16 energy market.

17 MR. WISEMAN: I think because, as you said, there
18 is such at risk here, and there's certainly huge financial
19 implications, there are a lot of folks that track those tariffs
20 and those postings on our web site of those changes that we do.

21 I think that we have a very engaged press. I
22 think in this case, because I think we did explain, we weren't
23 sure whether this was really a market manipulation. It didn't
24 even get to the kind of thing --

25 SENATOR BOWEN: When you say "we," who is the
26 "we"?

27 MR. WISEMAN: "We" is the Cal ISO and the action
28 we took in reporting this to FERC.

1 SENATOR BOWEN: Did your Market Monitoring
2 Division look?

3 I have found your Market Monitoring people over
4 time to be very good. They were ignored in 2000.

5 MR. WISEMAN: They weren't ignored on this.

6 SENATOR BOWEN: Okay, but they couldn't come to a
7 conclusion about whether there was market manipulation?

8 MR. WISEMAN: We've submitted that conclusion to,
9 as I said, to FERC, thinking -- we think there's \$6 million that
10 was potential gaming; can we take an enforcement action.

11 SENATOR BOWEN: So, you personally believe there
12 was market manipulation?

13 MR. WISEMAN: If my Market Monitoring people say
14 there looks like there was \$6 million that was inappropriate,
15 yes, I believe that. Now it's whether FERC tells us that we can
16 get it back.

17 SENATOR BOWEN: So what in your view should we do
18 in California if FERC disagrees with the conclusion of the
19 Market Monitoring personnel at the ISO? Or if they agree that
20 that was market manipulation but refuse to order a refund? What
21 should we do in California if that happens?

22 MR. WISEMAN: Well, I think we should
23 aggressively fight for refunds as we've been doing in the other
24 refunds that we think we are owed. And that, I guess, we have
25 some precedent of how to disagree with our regulator in that
26 regard.

27 And I would certainly -- you mention our Market
28 Monitoring people. They are an extremely professional group of

1 people. When I went to them I said, "Can you give me a number?"
2 And they said, "Yeah. We think it's six million."

3 That to me -- they don't usually do that, because
4 they say, "Well, we're very cautious. We're not sure. We don't
5 want to jump to any conclusions."

6 When they can say that, that to me makes a great
7 case that, yeah, we're going to fight about this because we've
8 got evidence that appears we're owed \$6 million.

9 SENATOR BOWEN: I've heard numbers. The 6
10 million that I heard from you is the first time I've heard that
11 number. The numbers that I've heard are 20 million to 50
12 million.

13 But I want to leave aside the specific numbers.
14 I think the concern is the one that was raised by Senator Dunn,
15 which is that if there is no reaction to a finding by the ISO
16 that there has been market manipulation, what do you expect to
17 happen among the market participants, generators, and traders,
18 if there's no penalty for market manipulation?

19 MR. WISEMAN: I think the reaction that I expect
20 even the most is, because the people at the Manufacturers
21 Association were impacted by this. I mean, these were large
22 users, direct access people that just got their bills nailed.

23 So, I think you've got an immediate lobby, and
24 their advocate who spoke to us in Tahoe is obviously -- I mean,
25 they've to a real motivation to help us try to get the money
26 back.

27 SENATOR BOWEN: Although it seems there was one
28 person in a room full of 150 people who knew about the incident.

1 MR. WISEMAN: I would disagree.

2 SENATOR BOWEN: You think others did, too?

3 MR. WISEMAN: Totally, absolutely.

4 SENATOR BOWEN: There was just only one who had
5 the gall, had the huevos to ask a question about it. And it was
6 huevos, I will assure you in the audience.

7 MR. WISEMAN: There was -- there had been lots of
8 process on this issue. That's why I was surprised that the
9 person stood up and brought it up, because I thought it had been
10 very openly vented. But that's certainly their prerogative.
11 And some of the customers who were concerned were there, and
12 we'd had discussions about that, saying we're waiting to see
13 what -- what FERC will do.

14 SENATOR BOWEN: Let me go back for a moment to
15 this question of ISO's filing of -- I don't know whether it was
16 a tariff, but clearly a filing that gave the FERC the authority
17 to review any potential board nominee.

18 As you and I discussed, I was very surprised to
19 hear that, too, because the ISO is a public benefit corporation,
20 established by statute. And the make-up of the governing board,
21 the operations, and so forth, are set forth in California law.

22 And essentially what this does is add a
23 qualification to our California statute that's
24 extra-legislative. And I was particularly surprised because I
25 didn't know that that was even in the works, since we had such a
26 resounding victory in the litigation with the FERC. It wasn't
27 even a close decision, despite all the threats.

28 MR. WISEMAN: Absolutely. The Court of Appeals

1 said, "You win, California. Governor gets to pick; Senate gets
2 to confirm."

3 SENATOR BOWEN: Right.

4 MR. WISEMAN: But FERC still gets to decide
5 whether they approve the tariff. And of course, they were
6 holding off on giving us some enforcement powers and approving
7 some of our tariffs tied to independence.

8 Our board was part of -- the FERC called all ISO
9 board members together back in Washington a couple months ago,
10 and the outgoing Chairman said, "Okay, you won. But can you at
11 least give some process that looks that we are being independent
12 as we try to select people?"

13 And I looked at that, along with my other board
14 members, and said, "We think that's great. We aren't giving up
15 anything."

16 The Governor -- it's not -- Senator Dunn, I
17 think, was misleading when he said that the FERC gets to vet
18 them. There's a process where stakeholders get to pick their
19 top five; the Governor can totally ignore it. The Governor and
20 the Senate gave up nothing. All we said was, okay, a process to
21 get a little more diversity, great, go through the process.

22 You still ultimately have with the Governor the
23 authority to approve the board members.

24 SENATOR BOWEN: I think the question for the
25 future is how the ISO might better work with the Legislature on
26 governance issues, since the governing statute is set out in
27 California law.

28 MR. WISEMAN: Totally. And as you and I

1 discussed, we made every effort to -- as a former Senate
2 staffer, I think I know what Senators want to know about. And I
3 asked our legislative people to come see you, see your staff,
4 schedule our General Counsel to have a briefing, all those
5 things before we filed that tariff.

6 Can we communicate better? Always.

7 SENATOR BOWEN: All right.

8 One other thing, at the risk of completely
9 putting everyone else in the horseshoe to sleep, you were going
10 to talk briefly about --

11 CHAIRMAN PERATA: Too late.

12 [Laughter.]

13 SENATOR BOWEN: We'll wake you up when it's
14 important.

15 Something in industry parlance called MRTU.
16 Although, I hate to use that because I had a dearly beloved
17 Toyota sports car that was stolen in 1992 that was called a
18 MRTU, where you could decide either to take golf clubs or a
19 briefcase, but not both because it was little.

20 MRTU now, apparently, stands for Market Redesign
21 Technology Upgrade, just so we get that out of the way. It
22 actually isn't my Toyota sports car.

23 This kind of a scheme, also known as locational
24 marginal pricing, is something that none of the other Western
25 states are proceeding with, in my understanding. It's something
26 that FERC was pushing two or three years ago, but it's my
27 belief, my understanding that they'd given up on it.

28 My question is why California should push forward

1 with this, whether it will complicate things for Californians,
2 given that we are a regional energy market, and then why it's
3 good for ratepayers?

4 And if you get through part of those and forget
5 the question.

6 MR. WISEMAN: My colleague, Mr. Cazalet, who I
7 depend on with his expertise, would probably be better to talk
8 to the technical end. And he is, indeed, the board member that
9 is overseeing that effort.

10 The technology upgrade part was obviously to get
11 new computers and give us the kind of software that we think
12 necessary to track prices and potential gaming. That is
13 obviously very good for consumers.

14 SENATOR BOWEN: Okay, we'll leave out the TU and
15 just talk about the MR.

16 MR. WISEMAN: Right. The issue of locational
17 marginal pricing, and the differentials that come out of that
18 may advantage certain consumers and generators over others.

19 To my simple way of looking at it was, staff
20 basically said we would average the prices so consumers would
21 not be put at any kind of a disadvantage. And that the system,
22 when FERC agreed to that, that gave us the comfort that we were
23 not damaging consumers or giving anybody an advantage.

24 And as I say, you're not looking at an expert in
25 locational marginal pricing, and some of the economic impacts of
26 that.

27 But we -- when Mr. Cazalet and I came on as the
28 Governor's first appointments, this process was about halfway

1 done. We looked at some things that maybe we would have done
2 different, but it's important for consumer protection that we
3 get this done. And that, as we've talked repeatedly with
4 stakeholders, that we do it in a way that's right for all
5 consumers.

6 SENATOR BOWEN: When you say stakeholders, who do
7 you mean?

8 MR. WISEMAN: I mean TURN. I mean the municipal
9 utilities. I mean the investor-owned utilities. All the people
10 we reach out to, and in a very public process to comment about
11 what they like or don't like about -- so we can try to make the
12 best decision. And that's what our board meetings are often
13 about when something like this is cued up, and here's the pros,
14 here's the cons; fine, what do you think is the best answer.

15 SENATOR BOWEN: I know that historically there
16 have been great concerns from San Diego and from particular
17 areas in the San Francisco Bay Area about locational marginal
18 pricing because of transmission constraints.

19 MR. WISEMAN: Correct.

20 SENATOR BOWEN: Can you comment on what the
21 impact on those ratepayers, and of course the economic impact if
22 rates change dramatically in those areas?

23 MR. WISEMAN: Obviously we'd like to get rid of
24 the transmission constraints for the fact that consumers are
25 paying a billion dollars a year because of transmission
26 constraints.

27 The fastest -- the best thing we can do for
28 consumer relief is to figure out how those congestion charges

1 and the like are not used to the detriment of consumers. As
2 we've worked through the programs ourselves, we've worked with
3 the various scheduling entities just this last two months to
4 come up with a Memorandum of Understanding of how we schedule,
5 and where congestion is, and how this kind of pricing hopefully
6 will not in any way work to the disadvantage of consumers.

7 And last July, we spent \$11 million in trying to
8 -- because of congestion and redispatch. This July we spent
9 600,000.

10 So, those kind of transmission constraints we're
11 making to say what in my approach is looking at the location of
12 market pricing that is average so it's spread across the board
13 and we don't disadvantage anybody.

14 SENATOR BOWEN: It goes the other direction;
15 right? It doesn't average pricing. It gives you the pricing,
16 the marginal price at a particular location.

17 MR. WISEMAN: Right. As a consequence, across
18 the grid if that is average. That's all I'm saying.

19 With that, that we are -- and again, I am not
20 technically qualified. You can have a great debate with
21 Mr. Cazalet on that area. I look to the experts and say --

22 CHAIRMAN PERATA: Oh, no, we're not.

23 [Laughter.]

24 SENATOR BOWEN: I suppose you and I should
25 apologize to everybody else for the level of detail.

26 MR. WISEMAN: Senator, I sincerely appreciate
27 your interest. When you and I were at Tahoe with the
28 Manufacturers, it was clear you understand this, and you care

1 passionately about it.

2 It's why I came back. I disagree with Senator
3 Dunn. I'm glad there aren't term limits at the ISO. I can come
4 back and clean up some of the mess that I was perhaps part of,
5 but know this all went out unanimously. We all had great hopes.
6 We all tried to do the right thing.

7 I'm grateful that I got a chance to come back to
8 work with you to make it better. And that's -- this is --
9 energy policy is a fabulous place to do good things for all
10 Californians. I'm really excited to be back.

11 I'm excited to have your perspective. I look
12 forward to working with you. I don't have all the answers. I
13 just want to do my best.

14 SENATOR BOWEN: Senator Perata, I'm finished
15 right now. I know we had discussed the potential way to handle
16 these nominees. What I'd like to do is hear the other questions
17 and then we'll come back.

18 CHAIRMAN PERATA: That's fine, thank you.

19 Senator Battin?

20 SENATOR BATTIN: Welcome to Rules Committee,
21 Mr. Wiseman.

22 I guess, unfortunately for you, a couple of the
23 Members on the Committee have spent a long time dealing on the
24 energy crisis and on the Energy Committee, and kind of lived
25 through this.

26 I just want to give you kind of a perspective of
27 where I come from in all of this. I was a squeaky wheel
28 throughout the entire energy crisis because I had one concern.

1 The area that I represent is hot. It's damn hot in the summer,
2 where the temperatures can get up to 120-plus degrees.

3 And my biggest concern at the time was the fact
4 that the electricity didn't go out, that the air conditioning
5 stayed on, and that my constituents, especially my elderly
6 constituents, stayed alive.

7 You know, there were stories during that time of
8 people who had gotten -- their mobilehome park had blacked out.
9 A guy left his daughter, who was at the kitchen table coloring,
10 and they came back an hour later, and the crayons had melted all
11 over. I mean, it just got that hot.

12 Unfortunately, some people in the desert died.
13 And it was just one of those concerns that I had. That's one
14 perspective I come from.

15 The other perspective I come from is, at the time
16 I represented two-thirds of San Diego County. You know, those
17 are the unfortunate souls that got to see the market break down
18 in their bills every month. PG&E customers and Southern
19 California Edison customers were insulated from the energy
20 crisis because their bills didn't go up, but people who lived in
21 San Diego, they saw it first-hand, because SDG&E had paid off
22 their strand of assets, and so they saw big increases. So, I
23 also had that pressure as well.

24 So, the reason I say this is, we all kind of have
25 our own perspective on this. But my priorities at that time
26 were making sure the lights stayed on.

27 So let me just ask you a couple of questions.

28 You know, when Senator Dunn was here in his

1 opposition to you, he was speaking with the great benefit of
2 20-20 hindsight.

3 Let me just ask you a question straight up. Did
4 you believe as a consumer representative on the ISO board that
5 it was better to leave the cap at \$500 versus \$250 because you
6 thought the generators should get more, or did you think that if
7 you had it at \$250, nobody would sell you power and the lights
8 would go off?

9 MR. WISEMAN: That is all that motivated me,
10 Senator, was that the lights would go off. And the damage
11 between 250 and 500, versus the damage of the lights going out,
12 it's the difference between people dying in your district and
13 having a few more dollars on a bill. And that was an easy call.

14 SENATOR BATTIN: When the lights did go out, when
15 we had the blackouts and the rolling blackouts around the state,
16 and then when the QFs weren't delivering power and we had more
17 blackouts, were you looking at it and saying, "Well, gee, you
18 know, this is \$250 power, nothing more than that," or "Let's get
19 power on the grid any way we can."

20 MR. WISEMAN: Well, and the reality was that
21 because it was emergency last-minute, we were out of market, and
22 we were buying well above the 250 price cap, which is what we
23 were forced to do because we didn't have adequate supplies.

24 SENATOR BATTIN: When someone sells you power,
25 this is a question that Senator Bowen was asking you, and I was
26 kind of struggling with it myself, she asked what does \$500
27 megawatt hour translate into?

28 I'm thinking, well, when? Is it at 3:00 o'clock

1 in the afternoon, or is it at 3:00 o'clock in the morning? I
2 mean, 3:00 o'clock in the morning, it would be just an
3 outrageously expensive, complete waste of money because you've
4 got lots of generation. But 3:00 o'clock in the afternoon of a
5 very hot day across the state, especially in the Bay Area, at
6 the time it might actually be cheap.

7 I mean, we pay on the arrangements that we have
8 with most of the renewables, the QFs in the state, we're paying,
9 for a kilowatt hour, we're paying 5.37 cents plus capacity.
10 Capacity is the real key here, because some of these QFs are
11 getting 25 cents on that capacity on the kilowatt. I mean, that
12 is a significant amount of money, but they're delivering at 3:00
13 o'clock in the afternoon when the sun is shining.

14 On the generators, you know, I kind of want to
15 make the distinction of where you were getting power from. You
16 were getting power from every place that you could get it; is
17 that correct?

18 MR. WISEMAN: We were. And I'd have to preface
19 it, when I came to the ISO, and I did because I was in
20 transition. My wife had just gone to the Court of Appeals. We
21 were moving, and my friends said, "Come up here. It's going to
22 be a good thing to figure out how we can all get better and
23 cheaper power."

24 And as I was reviewing the legislation, and in
25 the best interests of not letting anybody get an advantage, we
26 said you can't forward contracts. You can't take long-term
27 contracts. You can't hedge.

28 And at the time I remember thinking, why would we

1 do that? Anything I've ever done, that's what guarantees that
2 you've got some long-term planning and you don't put yourself in
3 a shortage situation, or you don't let a generator say, "Well,
4 in this kind of a market, I've got a wonderful opportunity to
5 gouge."

6 SENATOR BATTIN: For the mental health of us all
7 here, we will not debate the philosophy of what went wrong with
8 the energy policy.

9 And I agree with you, believe me. Not allowing
10 any utility or anyone to go long term -- well, you could. They
11 could go long term, but if they ever lost money, they just had
12 to pay it all back, so there's no incentive to go long term.

13 When you were buying power, now we know that
14 people were taking advantage of the State of California. It's
15 real clear, and it's terrible.

16 One of the worst offenders that we found was the
17 LA Department of Water and Power. You know, I remember asking
18 Mr. Freeman, when he had addressed the Legislature, he was
19 talking about early on in the crisis, he was telling us about
20 what they're doing at LADWP. And I asked him how much he was
21 buying power for from the federal government. And his response
22 was about 2 cents; 2 cents a kilowatt. But we found out later
23 that he was selling it for a \$1.40. Now, that's \$1400 a
24 megawatt.

25 You know, there were no good actors, apparently,
26 in this. Even people who were supposed to be good actors were
27 not.

28 Much to my chagrin, Governor Davis promoted him

1 to be in charge of buying all our power for the state.

2 But the ISO has changed now. What is the
3 function of the ISO today?

4 MR. WISEMAN: Well, the ISO is not dealing with
5 that, finding 30 percent of the power. We do have long-term
6 contracts as allowed by the PUC. We're 5 percent or less of
7 balancing the wholesale market. So, it's a very different
8 situation.

9 Obviously, I don't believe we would have another
10 energy crisis triggered by the way the last one was. Certainly
11 we continue to be more worried about these 200,000 homes, many
12 of them in your desert district that are coming on line. And
13 the ISO is -- the lesson learned is to be more aggressive, more
14 proactive. And just like we did with Path 15, work with the
15 PUC, work with the Energy Commission, bring it in ahead of
16 schedule, under budget.

17 And there's a whole bunch of Path 15-like
18 opportunities all over every one of your districts. And we need
19 to be identifying them, saying, "This is the savings; this has
20 to be done." We have to get these sited, or we're going to have
21 trouble.

22 So, that's the different ISO today.

23 SENATOR BATTIN: That's a good segue, and I want
24 to actually congratulate you and the ISO on getting Path 15
25 done. One of the reasons that we had the blackouts, it's not
26 for the lack of having adequate power in an area of the state.
27 It was the lack of getting that power to where it was needed.
28 That's where it broke down.

1 So, you don't foresee because of the improvement
2 of the transmission, you don't foresee those difficulties again?

3 MR. WISEMAN: No, and I was very pleased with the
4 test we had earlier this summer, when we said, "Okay, you say
5 you've got these reserves. Show us." And that was the first
6 time we'd really done that, which is trust but verify.

7 But it also showed us that especially in parts of
8 Southern California, we are very tight. I mean, we've -- it
9 looks like we've gotten through this summer, but next summer is
10 going to be here, and so are those 200,000 new homes.

11 My commitment is to be very aggressive at pushing
12 to identify where the bottlenecks are.

13 SENATOR BATTIN: When Senator Dunn said, with
14 that great, ominous tone in his voice, that FERC now gets to vet
15 the ISO appointments. I didn't quite understand that, and maybe
16 I don't understand this process.

17 Does that give FERC a veto power over the
18 appointments?

19 MR. WISEMAN: No, sir.

20 SENATOR BATTIN: It just gives them an opinion?

21 MR. WISEMAN: Yeah. They don't even get an
22 opinion.

23 We gave them a process that's like other ISOs,
24 were you bring up five qualified candidates. The Governor and
25 Senate can totally ignore those candidates.

26 All we did was say, "Okay, FERC, we'll --" and to
27 me, it's like great. Let's have some diversity.

28 SENATOR BATTIN: So, when we have a judge, the

1 Governor nominates a judge, and he runs it pass the JNE
2 Commission. They're vetting that candidate.

3 Is this similar to that?

4 MR. WISEMAN: Exactly. And if the Governor wants
5 to say, "I don't care if the JNE Commission said they're not
6 qualified, I'm still appointing," he can do that, or she can do
7 that.

8 SENATOR BATTIN: Right. I did not know it, so I
9 want to make sure I'm clear on it.

10 So, FERC just gets to offer their opinion.

11 MR. WISEMAN: And it's not really an opinion.
12 It's just a process which they -- because they say because
13 you're looking for independent people this way, we say you're an
14 independent board. And by them saying we're an independent
15 board, they give us enforcement powers and approve some things
16 that we've been asking for to have like other ISOs across the
17 country.

18 SENATOR BATTIN: And with the regionalization of
19 transmission, your relationship with FERC is very close; isn't
20 it?

21 MR. WISEMAN: Oh, yes. We -- the reality is
22 this, California is not an island. We're a net importer. It's
23 clear that interstate commerce is involved here.

24 And a good relationship with FERC, I think, needs
25 to be involved. That's what I felt when we were reaching out to
26 find middle ground. And I think that empowers us when, to
27 Senator Bowen's point, when we go back and say, "Hey, we
28 disagree. We want something more than what you're willing to

1 give."

2 The fact that we have a good working relationship
3 with them, and that we've met them half way, and I think not
4 given anything up, is good policy.

5 SENATOR BATTIN: Thank you.

6 Just speaking for myself, you know, we went
7 through this as a state. I went through this as a
8 representative, and it was terrible in terms of the energy
9 crisis.

10 I don't personally think that you or the ISO is
11 to blame for the fact that Enron and other energy companies
12 decided to game our market.

13 I think it was your responsibility, and I'm damn
14 glad that you took it as such, to keep the lights on. So, if
15 we're paying a price cap of \$500 a megawatt because no one's
16 going to sell us power underneath that, and it keeps the lights
17 on for the people I represent, well, that's a trade-off that I'm
18 willing to take.

19 I want to go back and make sure we get that
20 money. You know, I want to make sure that we get justice on
21 this because it's very important.

22 But I want to make sure also that in the future,
23 we don't allow a system like this to happen, or a breakdown like
24 this to happen. I think we're moving in that general direction,
25 putting more generation online, trying to encourage.

26 I'm a very strong advocate of all generation
27 proposals to build new plants because I want a glut. I don't
28 want it to go the other way. I'll cry crocodile tears when I

1 hear from the generators that there's just so much generation
2 out there that they can't sell it for what they would like to.
3 I'm fine with that.

4 But we have as a state, we've got to make sure
5 that we accommodate those 200,000 people and keep the lights on.

6 With that, Mr. Chairman, I will move the
7 confirmation.

8 CHAIRMAN PERATA: Thank you.

9 Senator Ashburn.

10 SENATOR ASHBURN: Thank you, Mr. President.

11 I don't really have any, questions except to ask
12 you, Mr. Wiseman, if there is anything that you would like to
13 say in addition to that which has already been offered in
14 response to Senator Dunn, who presented his point of view in the
15 usual fashion, and line of questions that Senator Bowen asked
16 with respect to your service on the prior ISO?

17 MR. WISEMAN: Thank you, Senator.

18 As I said, I was very proud of my service on the
19 prior ISO and disappointed, as we all were, as Senator Battin
20 just talked. We never want to go there again.

21 I think that's what I bring back, is that
22 experience.

23 Contrary to what Senator Dunn said, I was part of
24 the consumer community. That's how I've always thought of my
25 role and my place. That's why I was elected Vice Chair, because
26 I was in the unique position to not be the technical expert, but
27 ask what are we doing for consumers. And that's what I continue
28 to do.

1 And as I say, I think my experience with the ISO
2 doesn't disqualify me. Rather, it makes me more qualified to
3 make sure that we don't repeat the mistakes, because I was
4 there, and I don't want to see it done again.

5 SENATOR ASHBURN: I guess that's the point that I
6 would make. I've known you personally for well over 20 years.
7 And I know from your previous life that the agriculture industry
8 was the leading consumer voice for reasonably priced electricity
9 in California, a feeling that Californians were not being well
10 served, and especially those larger consumers of electric power
11 in our state on a price structure, or a generation capacity, to
12 meet the growing demand.

13 And you were personally a leader in that effort
14 long before ISO, and I think is an excellent baseline of
15 experience and testimony to your commitment to the consumer.
16 That's where it began, as I recall.

17 And the only thing that I would say other than
18 that is to, tongue-in-cheek, associate myself with the comments
19 that I saw in the record from my dear friend, Jim Costa, who
20 also is very much in favor of your confirmation. I guess this
21 is one where Jim and I are very much in agreement.

22 And I also agree with your point. I think
23 because of what you lived through, and the experience that you
24 gained from the prior experience, I think that there probably is
25 no one better in the State of California to make sure that the
26 mistakes so of the past are not repeated, and that the ISO
27 performs at a level of accountability to the people of the State
28 of California, the likes of which we've never seen before.

1 And the question is, are you qualified? Are you
2 sincere? Are you competent and dedicated? And are you honest?
3 And in every one of those categories, you certainly are. And
4 I'm pleased to support you.

5 MR. WISEMAN: Thank you.

6 CHAIRMAN PERATA: Senator Bowen.

7 SENATOR BOWEN: Mr. Chair, as a course of action,
8 and this is something that I've discussed with Mr. Wiseman, it
9 seems like one of the things we might do is, particularly in a
10 term-limited Legislature, is to statutorily strengthen some of
11 the communication between the ISO and the Legislature.

12 We have a model for some of this with regard to
13 the Public Utilities Commission, where the President of the PUC
14 is required to appear, on an annual basis, before the policy
15 committees in the Assembly and the House, brief the committees,
16 and to answer questions. It's a very good way to
17 institutionalize communication.

18 I think there probably are some other things that
19 we can do. I don't think there's anything that will be
20 particularly controversial.

21 So, my suggestion would be that we move this
22 nomination to the Floor and deal with some of the these issues
23 which, again, because there's no rocket science involved in
24 creating better avenues of communication, I think we can do it
25 before the end of the session.

26 I will feel a lot better if I know that when I
27 leave this place, that there are some regular kinds of
28 communication and reporting that will be available, both to

1 Legislators and to the public, because ultimately it's
2 ratepayers that this is all about. It's those who are paying
3 the electricity bill that these organizations are set up for.

4 So, I will be not voting. I believe there will
5 be three votes to move the nomination, and I fully expect that
6 we can get this minor adjustment to the way we communicate done
7 between now and the time at the end of the session, when we need
8 to finalize Mr. Wiseman's nomination.

9 CHAIRMAN PERATA: It seems to me that would be in
10 the best interests of everybody.

11 MR. WISEMAN: Totally, and I look forward to
12 working out that agreement.

13 CHAIRMAN PERATA: Especially those of you sitting
14 here.

15 Is anyone here who would like to speak in favor?
16 There's an old familiar face.

17 MR. GAGE: Older by a day, since yesterday was my
18 birthday.

19 My name is Tim Gage. I'm currently serving as a
20 member of the Board of Governors of the ISO.

21 It's been my privilege to serve as a member of
22 the board for two years. I'm here today to support the
23 confirmation of all four of the nominees who are before you.

24 I'll be very brief. This has been a period of
25 significant transition for the ISO. During a period of the last
26 couple of years, we've gotten ourselves a new CEO, and we have a
27 largely new board.

28 Nonetheless, the ISO, in my view, has made some

1 important strides. We've shed what was at least a perception of
2 an isolationist tendency on the part of the staff of the ISO,
3 and we have reached out and are working cooperatively with
4 sister agencies in the energy arena, such as the PUC, the Energy
5 Commission and others, to ensure adequate supplies of
6 electricity through resource adequacy and other means.

7 We've also continued to move forward with our
8 effort, sometimes called MRTU, to rationalize the ISO's
9 involvement with state energy markets, and to reduce costs, and
10 increase reliability.

11 Finally, we've undertaken a much needed,
12 particularly in my view, organizational realignment in order to,
13 again, lower our costs and provide the highest value to
14 consumers throughout the state.

15 I think the important thing for your
16 consideration today is that the new board has seamlessly carried
17 forward these efforts of the prior board in each of these areas,
18 while bringing a fresh perspective to the challenges that the
19 state faces in the energy arena. Each of the nominees before
20 you today brings a great deal of thoughtfulness, dedication, and
21 their own particular talents to the position of ISO board
22 member.

23 I would encourage you to support their
24 nomination. Thank you very much, Mr. Chairman.

25 CHAIRMAN PERATA: Thank you. Thanks for being
26 here.

27 Anyone else? If not, we have a motion to
28 approve. Anybody in opposition?

1 Seeing none, we have a motion. Please call the
2 roll.

3 SECRETARY WEBB: Ashburn.

4 SENATOR ASHBURN: Aye.

5 SECRETARY WEBB: Ashburn Aye. Bowen. Battin.

6 SENATOR BATTIN: Aye.

7 SECRETARY WEBB: Battin Aye. Perata.

8 CHAIRMAN PERATA: Aye.

9 SECRETARY WEBB: Perata Aye. Three to Zero.

10 CHAIRMAN PERATA: Nonetheless, thank you.

11 SENATOR BOWEN: He gets an endurance award at
12 least; don't you think?

13 CHAIRMAN PERATA: Yes.

14 We'll take a break in deference to our
15 stenographer.

16 [Thereupon a brief recess was taken.]

17 CHAIRMAN PERATA: I'd like to reconvene the
18 Committee.

19 I've been asked to be on my best behavior now, so
20 I'm going to be, because we have a guest visiting from out of
21 state, and we don't want any rumors spread about California. Of
22 course, after the next hour, nobody will believe you.

23 [Laughter.]

24 CHAIRMAN PERATA: We have three other members of
25 the board. Dr. Cazalet, Elizabeth Lowe, and Mason Willrich, if
26 you'd all like to come up here, there'll be strength in
27 numbers. We're worn out; relax. You'll be fine.

28 We'd like to offer you an opportunity to briefly

1 introduce yourself and reconsider whether or not you want to
2 continue to do this work.

3 Ms. Lowe, why don't we start with you, since your
4 daughters have been here. They're so wonderful.

5 MS. LOWE: First let me introduce my daughters,
6 who may never want to come to the Capitol again after this, and
7 said that one of the men was really harsh earlier. Jordan
8 Costello who -- none of you all up here are harsh -- Jordan
9 Costello, who's almost 11, and Cameron Costello, who is 7.

10 CHAIRMAN PERATA: Welcome. We're going to leave
11 in a minute, the three of us.

12 MS. LOWE: I know. They've been promised it's
13 cream by the Senator.

14 I will give you some very brief comments. I
15 think that we've been here for a long time, and you all have all
16 probably have a file on me, and I've talked with some of your
17 staff.

18 First let me say this is a huge honor to be
19 here. I appreciate being here and being able to serve the great
20 State of California, particularly in the energy industry, which
21 has really been my life. So, not necessarily everyone else's.

22 SENATOR BOWEN: That's why I'm worried about you.

23 [Laughter.]

24 MS. LOWE: As a professional with almost 20
25 years' experience in various aspects of the energy field, I feel
26 well positioned to work with the state, and my fellow board
27 members, and the management and staff of the ISO to ensure
28 greater reliability, and to work with all the various

1 stakeholders and customers, including government and consumer
2 groups, to improve and enhance the current stakeholder process.

3 My background, which has involved building and
4 maintaining relationships across the industry -- from energy
5 consumers to investor-owned utilities, to public power
6 companies, to generators -- provides me with a breadth of
7 knowledge across various segments of the energy markets, but
8 more importantly, with a focus on the customers consuming the
9 power at the meter. I understand the ultimate importance of
10 reliability of power to these consumers at a fair price for
11 resources that result in limited harm to the environment.

12 My focus has always been on the customer side of
13 the energy equation, and I look forward to the opportunity to
14 contribute to the development of adequate transmission resources
15 to allow increased energy availability and efficiency at the
16 lowest cost to California consumers.

17 Should you decide to confirm my appointment, I
18 include the following as key goals for my service on the ISO
19 board.

20 First, to improve coordination among the various
21 state agencies -- the PUC, the CPUC, the administration, and the
22 Legislature. To improve coordination and cooperation between
23 the stakeholders -- customers, utilities, investor-owned and
24 municipal, transmission owners, generators, and other market
25 participants. To streamline processes at the ISO, ensuring
26 efficient use of resources, to promote effectiveness of the ISO
27 in the marketplace at a reasonable cost to customers, and make
28 sure that the ISO does not lose focus on the ultimate user of

1 the electricity that is brought, transmitted, and sold.

2 Already, through a recent realignment effort at
3 the ISO resulting in cost cutting and improved efficiency, and
4 the creation of a Stakeholder Relations Committee, which I
5 Chair, I feel that I have already made strides towards these
6 goals in a very short amount of time.

7 I will continue to put my energy and effort into
8 this position and look forward to receiving feedback from all
9 stakeholders as well as yourselves on matters related to the
10 ISO.

11 Thank you for your consideration, and I'd be
12 happy to answer questions.

13 CHAIRMAN PERATA: I have one question. How did
14 Duke do the year you graduated?

15 MS. LOWE: Well, we had a losing -- let's see.
16 My first year there was a losing season with Coach Kay, but by
17 the time I left -- I did undergrad and grad school there in five
18 years; didn't have enough money, really, to do it in six -- but
19 we went to the championship that year against Kansas and lost.
20 But that was Johnny Dawkins' era, you know.

21 CHAIRMAN PERATA: You didn't have to say you
22 lost.

23 MS. LOWE: Okay. Now we're a force to be
24 reckoned with, but thank you for asking that important
25 question.

26 SENATOR BOWEN: I think she's probably okay
27 because Coach Kay looks a lot like Joe Dunn, probably okay with
28 him, but she's got a problem with me as a UVA grad.

1 MS. LOWE: Oh, no.

2 CHAIRMAN PERATA: Plus and minus in everything.

3 MS. LOWE: And where is Ralph Sampson today?

4 SENATOR BOWEN: He played while I was there.

5 CHAIRMAN PERATA: Are you ready?

6 MR. WILLRICH: I am ready, Mr. Chairman.

7 Chairman Perata, Members of the Senate Rules
8 Committee, I'm Mason Willrich. And it is a pleasure and
9 privilege for me to appear before you today regarding my
10 appointment to the California Independent System Operator, or
11 CAISO Board of Governors.

12 I'm going to very briefly summarize my experience
13 and qualifications and my goals as a board member, if the Senate
14 confirms my appointment, and thereafter welcome your questions.

15 After law school, I served in the Kennedy and
16 Johnson administrations in the early 1960s, working on nuclear
17 arms control. From 1965 to 1979, I was in the academic world at
18 an institution that, as Senator Bowen is familiar with, I was
19 teaching law at the University of Virginia, where I also founded
20 and directed an interdisciplinary Center on Technology and
21 Public Policy.

22 In 1979, I was recruited into the energy utility
23 industry by Pacific Gas and Electric Company. From 1979 to
24 1988, I was responsible for PG&E's strategic planning,
25 budgeting, comptroller, and information systems.

26 From 1989 until 1994, I was CEO of PG&E
27 Enterprises, a wholly owned subsidiary of Pacific Gas and
28 Electric Company for unregulated business development.

1 After retiring from PG&E, I founded and was
2 Chairman of Energy Works, a joined venture of Pacific Corp and
3 Bechtel, which provided combined heat and power to industrial
4 firms in less developed countries. I was also a partner in Nth
5 Power, a major capital firm which invests in early-stage energy
6 technology companies.

7 I presently devote my working time exclusively to
8 several nonprofit, public service activities.

9 CAISO's vision statement is, quote, "to be the
10 preferred provider of superior electric power transmission
11 service for the benefit of the electricity consumers in
12 California."

13 I affirm that's this statement. CAISO plays a
14 crucial role 24 hours a day, seven days a week, operating the
15 California transmission system.

16 As a member of CAISO's Board of Governors, my
17 goals are to help guide CAISO toward achievement of the
18 following outcomes. CAISO provides high reliability and
19 economic values to CAISO's end-use electricity consumers,
20 participating transmission owners, and other stakeholders and
21 market participants.

22 Second, CAISO accelerates planning, development,
23 and construction of necessary transmission projects.

24 Third, CAISO minimizes fragmentation and enhances
25 cooperation with transmission operators in other California
26 control areas and elsewhere in the Western United States
27 Region.

28 And finally, CAISO becomes a recognized leader

1 among independent system operators in the United States through
2 effective implementation of its recently adopted corporate
3 realignment, cost reduction, and service enhancement program.

4 Thank you. I welcome your questions.

5 SENATOR BATTIN: Mr. Cazalet.

6 DR. CAZALET: Thank you. My name is Ed Cazalet.
7 I'm pleased to be here today, a nomination for this position.

8 My goal as an ISO governor is to serve the
9 California consumers and the California economy. Other market
10 participants come second to those participants. I can do this
11 by helping the ISO provide open access over its transmission
12 lines so that consumers can get the least expensive and most
13 reliable power possible.

14 I've committed to study every decision brought
15 before me, and I will strive to investigate problems and
16 concerns that come up in both the ISO systems and markets. I'm
17 committed to open meetings and a transparent decision making
18 process by the board.

19 I have no ownership, business, or consulting
20 relationship with any ISO participants or other entity that
21 could pose a conflict in my role as a board member.

22 I have nearly 40 years of experience in the power
23 and related industries, initially as a researcher, later as a
24 consultant, and finally as an executive in various firms. This
25 experience helps me to understand the ISO operation and its
26 management. I can apply this experience to assure that the ISO
27 software and hardware systems are no more complex than
28 necessary, and to control costs placed on market participants

1 and consumers.

2 My experience in transmission analysis will help
3 me support the ISO analysis of adequate transmission
4 infrastructure for California.

5 Finally, I want to express my presentation of the
6 ISO management team and its staff for its work and for its
7 assistance to the board.

8 I look forward to your questions.

9 SENATOR BATTIN: Thank you.

10 Before we go to the Members, do you have any
11 family you'd like to introduce? Any ice cream you'd like to
12 share?

13 [Laughter.]

14 MS. LOWE: Do I have to report that?

15 CHAIRMAN PERATA: Yes. The L.A. Times and New
16 York Times are here today.

17 [Laughter.]

18 SENATOR BATTIN: Do you have any family here
19 you'd like to introduce to the Committee?

20 MS. LOWE: You weren't here. They got a full
21 introduction and ice cream.

22 CHAIRMAN PERATA: I want to ask you one question.
23 What did you fly in the Strategic Air Command?

24 MR. WILLRICH: I was a co-pilot in a B-47 when
25 Curtis LeMay was the head of SAC.

26 CHAIRMAN PERATA: Is that right. I don't
27 remember him as head of SAC, but I remember him.

28 You're a constituent of mine.

1 MR. WILLRICH: Yes, I know that, Senator Perata.

2 CHAIRMAN PERATA: Any questions?

3 SENATOR ASHBURN: Just one.

4 I use Tehachapi and the wind generation as an
5 example on transmission, but as you know, Tehachapi is the
6 largest wind generation facility in the world, the greatest
7 output of electricity from wind power.

8 I'm told that that capacity can be doubled or
9 tripled if additional transmission can be accomplished, which,
10 of course, those generators are eager to do, and would be
11 greatly beneficial to the people of California.

12 How does the ISO help in accomplishing an
13 expansion of transmission capacity so that the public can get
14 the benefit of more power from an energy source that I think
15 everyone would agree is nonpolluting?

16 MR. WILLRICH: We have an active transmission
17 planning function that has just recently been enhanced, the
18 importance of it, in our realignment process, where by now it is
19 at the vice presidential level that our transmission planning is
20 located.

21 And that project will be one among all the
22 transmission projects that we will be looking at, evaluating.

23 And in terms of both the fact that it is a
24 renewable energy source, and that it is going to be economic in
25 the overall scheme of things, and further more, that there will
26 be a need for cooperation here, of course, between the CAISO and
27 the PUC and the CEC in terms of bringing a project like that
28 forward.

1 But we will be actively working with the
2 developers and getting that project done, if it turns out that
3 it's going to be really a winner, which it could well be for the
4 state.

5 SENATOR ASHBURN: My question is broader than
6 just Tehachapi and the potential. It has to do with
7 transmission capacity throughout the state.

8 Which is the lead agency? We have this unique
9 combination of governmental entities in the Public Utilities
10 Commission, the Energy Commission, and the ISO, and a lot of
11 regulatory agencies that also get in the way of progress from
12 time to time. And so, who views themselves as the lead?

13 DR. CAZALET: I think that's part of the problem.
14 There is no lead, and it's somewhat confused.

15 SENATOR ASHBURN: Is that the ISO's role?

16 DR. CAZALET: Well, the ISO does not have siting
17 authority. The ISO can propose lines that it feels that are in
18 the benefit -- to the benefit of California consumers, but
19 ultimately the CPUC, I think right now in conjunction with the
20 CEC, actually approve the siting of those lines. Then it still
21 has to go before FERC, and they approve the rates on those
22 lines.

23 So, it's a process that, while everybody's
24 attempting to work together now to get the necessary
25 transmission built, it's a process that perhaps could be
26 streamlined.

27 MR. WILLRICH: But I do think that the CAISO does
28 play and will play a stronger advocacy role for projects which

1 really have high merit to them. That's going to be in the
2 context of an overall larger transmission plan that we are
3 taking the lead on developing.

4 SENATOR ASHBURN: It took an extraordinarily long
5 period of time and considerable effort to bring Path 15, which
6 everyone acknowledged for a very long time was a major
7 bottleneck in the delivery system in our state. And yet, it
8 took Herculean efforts to do that.

9 It seems to me that you're in the delivery
10 business for the people of California. You know, whether it's
11 formal or informal, this issue on transmission, I think, is
12 something that I would encourage that the ISO pursue.

13 So, thank you.

14 CHAIRMAN PERATA: Can you imagine if you ever
15 harnessed the wind in the Capitol?

16 [Laughter.]

17 SENATOR ASHBURN: Some are greater generators
18 than others.

19 CHAIRMAN PERATA: Touche.

20 Any other questions.

21 SENATOR BOWEN: Let me ask -- nothing like the
22 last time, I promise.

23 Mr. Cazalet, on the resume that you provided us,
24 you are listed as CEO and founder of the Cazalet Group, which
25 you state, "provides strategic analysis, consulting, training,
26 design, and research to industry and government executives
27 facing changes in electric power market structures and
28 regulation."

1 However, there is no income from that listed on
2 your Statement of Economic Interest.

3 I'm just not clear about your current role in
4 other related business.

5 DR. CAZALET: When I took on this position, I
6 shut down the existing contracts I had through that system, and
7 I will not take any additional work from any potential
8 participant in the Cal ISO or anybody that would have any
9 interest in the ISO.

10 And I'm currently pursuing the development of
11 consulting work in Asia and Europe. I think that's far enough
12 away and I won't get in trouble.

13 SENATOR BOWEN: I think so, as long as you're not
14 dealing with LNG.

15 DR. CAZALET: No.

16 SENATOR BOWEN: That is my only separate question
17 of you.

18 For all three participants, my question would be
19 how you view the ISO's role in dealing with market power, market
20 manipulation, and in the problems that the state has had with
21 FERC in enforcement, and how you see us regaining the confidence
22 of California ratepayers that FERC will take appropriate
23 regulatory action?

24 Or, that you perhaps at the ISO have gained some
25 of that on your own.

26 DR. CAZALET: First, I'd like to say that it's
27 critical, the ISO will always have limited ability to deal with
28 the problems because it's working at the last minute. So, it's

1 critical we have sufficient resources, transmission, generation
2 in place and long-term contracts in place so that the ISO,
3 hopefully, never has to deal with this problem again.

4 On the other hand, if it does, we need to
5 aggressively pursue actions. When the inter-type bidding issue
6 came up, I immediately demanded of the staff they call up the
7 potential people and tell them to stop now.

8 SENATOR BOWEN: And did they?

9 DR. CAZALET: As far as I know.

10 SENATOR BOWEN: Okay. And the enforcement action
11 on that? You're the technical guy in this group.

12 DR. CAZALET: Yeah, I'm not the legal guy. But I
13 think we need to get back to FERC and find out why it's taking
14 so long to get a response from them. I'm surprised it's taken
15 so long.

16 SENATOR BOWEN: So, you think that probably from
17 March to August is longer than we ought to have a FERC case on
18 this kind of a matter go?

19 DR. CAZALET: I think we should have some kind of
20 response back by now, yes.

21 MR. WILLRICH: Senator, my view, I agree with
22 everything that Ed has said.

23 In addition, I would want to weigh in with my own
24 sense of urgency about this function. In terms of getting from
25 here to there, continuing to decongest the transmission grid is
26 going to contribute greatly to being able to mitigate any kind
27 of potential exercises of market power by individual
28 generators.

1 And beyond that, I feel that we do need to really
2 aggressively pursue every matter that looks to us to be possible
3 where there's market manipulation going on, aggressively take
4 that up with FERC and with the market directly.

5 MS. LOWE: Having been through the experience
6 that we've heard about today with the energy crisis, and people
7 putting their heads in the sand about market manipulation, I
8 will say that it was an interesting experience for me to have my
9 first board meeting as a teleconference addressing this
10 particular issue at the end of March, having just been appointed
11 March 3rd, and thinking, first of all, oh, my goodness, we're
12 here again.

13 But also realizing and recognizing that this was
14 not put-their-heads-in-the-sand ISO, or a put-their-heads-in-
15 the-sand board. That it was being addressed right away. The
16 rules were being changed right away, and then it was going to
17 FERC.

18 And it certainly is an issue that I'm concerned
19 about. And again, you've got an active board here and a lot of
20 interest.

21 Certainly my mission is to make sure that
22 consumers are protected. So, I will continue to pursue that and
23 make sure that -- try to make sure that that's not happening.

24 SENATOR BOWEN: One final question that's for
25 Mr. Cazalet. It comes out of a conversation that I think you
26 had with Evan Goldberg in my office. And I don't know whether
27 it's gotten repeated correctly. So, the first thing I want to
28 do is find that out.

1 In my notes from him, he indicates that you
2 stated that you're concerned that the ISO could expand its reach
3 into the demand response market, which would not be a good
4 idea.

5 At first, that may or may not be an accurate
6 representation of the conversation, since he's not an Energy
7 Committee consultant.

8 DR. CAZALET: I'm not sure of the context in
9 which that was answered. I'm not sure that the ISO should take
10 over all the demand response.

11 I do think the ISO should provide the appropriate
12 price signals and control signals for demand response. I don't
13 think the ISO is in a position to do the retail side of demand
14 response. Maybe that distinction was what --

15 SENATOR BOWEN: It could well be. We've we had
16 some discussions about creating a market where -- I mean, it's
17 clear that you can't bid in the entire capacity of a commercial
18 application because you get no takers if they have to send
19 everybody home from work.

20 But I think it's clear at this point that you can
21 establish a market in which somebody says, "I will agree to
22 reduce my usage by 5 percent, 8 percent, 10 percent, whatever it
23 is, when called on for a particular amount," and that's a
24 function that could be established.

25 DR. CAZALET: Right, through aggregators, because
26 the ISO's not going to be in position to deal with each
27 homeowner or each small business.

28 SENATOR BOWEN: Exactly. That clearly wouldn't

1 be done at small customer level, but there are some large
2 customers who could do that.

3 DR. CAZALET: Certainly the ISO has a role to
4 play in demand response, yes.

5 SENATOR BOWEN: I will save the discussion about
6 locational marginal pricing and MRTU for a private discussion,
7 lest I pay extreme consequences beyond that which I've already
8 incurred.

9 CHAIRMAN PERATA: It's probably too late, but I
10 appreciate the thought.

11 Your daughter -- I would have eaten a whole box
12 by the time she's just finishing that. It's just amazing.
13 Savoring it.

14 We have a motion.

15 SENATOR BOWEN: Senator Perata, what I would like
16 to do here, and again with acknowledgement we have some work to
17 do, is, Mr. Cazalet has a deadline of 10/07/05. I think it's
18 appropriate to move his nomination to the Floor at this time.

19 Then what I'd like to do is just ask that we put
20 over the other two nominations for a week.

21 This is not to be viewed as any kind of a
22 discussion on your suitability for appointment. It's not. But
23 we have some work to do on this piece of legislation, and I'm
24 confident that we can get all of this wrapped up by the end of
25 the session. That would be my preference.

26 CHAIRMAN PERATA: And I have discussed this with
27 the Governor's Office. They're aware of it. We're all just
28 sort of interested in coming up with a better working

1 relationship with you and institution.

2 So, if that's agreeable, we will take
3 Dr. Cazalet on a motion to approve. Call the roll, please.

4 SENATOR BOWEN: And you don't have to come back.

5 CHAIRMAN PERATA: Unless you want to.

6 SECRETARY WEBB: Ashburn.

7 SENATOR ASHBURN: Aye.

8 SECRETARY WEBB: Ashburn Aye. Bowen.

9 SENATOR BOWEN: Aye.

10 SECRETARY WEBB: Bowen Aye. Cedillo.

11 SENATOR CEDILLO: Aye.

12 SECRETARY WEBB: Cedillo Aye. Battin.

13 SENATOR BATTIN: Aye.

14 SECRETARY WEBB: Battin Aye. Perata.

15 CHAIRMAN PERATA: Aye.

16 SECRETARY WEBB: Perata Aye. Five to zero.

17 CHAIRMAN PERATA: And I thank all of you for
18 doing this. Not being here today, but just what you're doing in
19 general. It's very important, and you're extremely well
20 qualified. We appreciate your volunteering your time in this
21 manner. And you do not have to come back next week.

22 SENATOR ASHBURN: Mr. President, just for
23 clarification. I understand the request, but I'm not clear why
24 we're not handling this in the same manner as we handled
25 Mr. Wiseman. You want us to vote him out of the Committee today
26 but to hold it on the Floor pending the opportunity to develop
27 the reporting changes in statute that you suggested.

28 SENATOR BOWEN: It's solely because we don't have

1 any time concern with the nominations of Mr. Willrich and
2 Ms. Lowe. They don't expire in the appointment sense until
3 March of 2006, so we could readily do that later, as opposed to
4 do other two. Mr. Cazalet and Mr. Wiseman must be sent off the
5 Floor by early October this year if they are to continue to
6 serve.

7 SENATOR ASHBURN: From my perspective, if I'm
8 reading the Committee properly, you're going to be voted out of
9 this Committee and recommended to the Floor. I just don't
10 understand why we can't do that today. We've made a
11 commitment, Mr. President has made a commitment with respect to
12 pursuing the legislation. That just seems to make a lot more
13 sense to me, but Mr. President, I'll defer to your judgment on
14 that.

15 SENATOR BOWEN: I'm confident we can get
16 everything done in time.

17 CHAIRMAN PERATA: Thank you for deferring to my
18 judgment. It hasn't happened very often, certainly from the
19 Republican side.

20 With that, thank you all for being here and
21 congratulations.

22 [Thereupon this portion of the
23 Senate Rules Committee hearing
24 was terminated at approximately
25 4:00 P.M.]

26 --ooOoo--
27
28

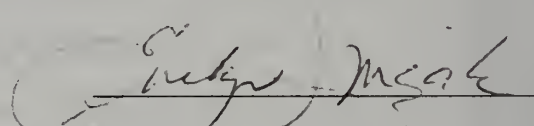
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of August, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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**Statement of Donald G. Fisher
Rules Committee Hearing
California State Senate
August 24, 2005**

Mr. Chairman and distinguished members of the Committee, it is an honor to come before you as a nominee of Governor Schwarzenegger for re-appointment to the California State Board of Education.

As we all know, education is absolutely critical for success, both for our individual citizens and for our State as a whole. More than ever before, a young person without a strong education faces a bleak future.

Growing up in San Francisco, I received a good education thanks to California's public schools. Too many students are not so lucky today. We now see an unacceptable disparity between good schools and bad, and between students who get a good education and those who graduate without the basic knowledge and skills they need to fulfill their potential. By and large, poor and minority children go to worse schools, are taught by less experienced teachers, and have less expected of them. It does not have to be this way. And as people in a position to effect change, it is our responsibility to put an end to it. That is why I became involved in the effort to improve our public schools.

During my first term on the State Board of Education, California has made a great deal of progress toward equal educational opportunity by focusing on standards, achievement, assessment and accountability. For example, we have delivered on the Legislature's aim of developing truly world-class state academic standards. But we need to do more. Going forward, I hope the Board will continue to help bring those standards to life in all of our classrooms everyday. We must remain committed to professional development, so that we have the best trained teachers and principals, and we must ensure that our teachers are using high quality lessons, materials and textbooks that are well-aligned to our state standards.

We also have developed a strong assessment system that sets high expectations for achievement. I hope the Board will continue its efforts to ensure that our state tests reflect our state standards. And we need to ensure that the results of those tests are provided as quickly and clearly as possible, so that all of us in this shared enterprise – parents, teachers, principals, superintendents, State Board members and legislators – can use the data to drive improvement and make sure that no child falls through the cracks.

California's schools are increasingly being held accountable for performance. This allows us to reward improvement and to focus on the schools whose students are struggling the most. I believe it is an important mandate of the Board to find ways to foster improvement in our lowest performing schools.

Since first being appointed to the State Board by Governor Davis, I have these last four years to be very rewarding. I have tried to aid in the Board's deliberations by drawing on

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my experiences from building a business as well as my education philanthropy work. I am confident we are on the right track. Test scores are rising each year and our students are rising to the challenge. But there is much that remains to be done to realize the goals we all share. I look forward to the opportunity to serve another term as we strive to provide all students – especially educationally disadvantaged students – the academic knowledge and skills required for an unfettered pursuit of opportunity in our country.

Thank you for your consideration.

May 23, 2005

The Honorable Don Perata:
Chair, Senate Rules Committee
State Capitol, Room 205
Sacramento, CA 95814

Dear Senator Perata:

It is my pleasure to submit this response to your May 6 and May 12, 2005 letters regarding my service as a member of the Board of Governors of the California Independent System Operator.

SELECT COMMITTEE QUESTION

Statement of Goals: What do you hope to accomplish during your service as a member of the CAISO governing Board?

The core mission of the CAISO is to maintain the reliability of the transmission system while providing fair and open access to the wide array of utilities (investor-owned and municipal) and other organizations and entities desiring to use the grid – the ISO's "market participants". My goal is to assure we accomplish that reliability and open access mission in a way that benefits California consumers from an improved economy and environment.

California consumers pay in excess of \$30 billion for electric service annually [energy, transmission and distribution costs]. These costs have significant impact on families and businesses. To serve that demand for electricity, Californians have relied heavily on many power plants that are old and inefficient. These power plants place a heavy burden on the air quality in certain parts of the state. I believe that the ISO must do better in this area as the demand for electricity continues to increase, as evidenced by new peaks in power consumption seen last year and expected to increase even further this summer. Finding ways to improve on how we meet the demands for electricity in California is the challenge of state and federal public policy makers, consumer groups, and market participants – and will be my principal focus as a member of the ISO Board.

Fortunately, I believe that steps we take to improve the economy will benefit the environment and vice versa. The common path is to create a business climate based on sensible, predictable and proven rules. We are headed in that direction with state efforts to achieve generation and transmission resource adequacy, an emerging and robust forward bilateral energy market and an MRTU design proven effective in other regions of the country.

My objective is to ensure that the CAISO takes steps within its authority that assist in the improvement of the California economy and environment. To achieve that end, we must be diligent in understanding the impact our actions have on the consumers of California, manage our fiduciary responsibilities carefully and remain engaged with policy makers and market participants. I hope to assist in achieving that goal by making the following my priorities during my service on the ISO Board:

- **Infrastructure Development:** setting policies and support initiatives that improve the transmission and generation infrastructure and use it more efficiently.
- **Public Policy:** participating in and encouraging other CAISO Board members and staff to remain attentive to and participate in public policy discussions related to our core mission.
- **CAISO Corporate:** setting policy and providing direction to management that will lead to stable corporate operations, reducing CAISO costs, fostering an environment that encourages internal discussion, debate, and collaboration, and increasing staff morale and its sense of purpose.
- **Stakeholder Relations:** within limits adopted by the Board and consistent with overall state energy policy objectives, finding ways for stakeholders to facilitate the decision-making processes of the Board, adding value through services offered and understanding stakeholder business objectives.

1. Role of CAISO and its Governing Board

Section 345 of the Public Utilities Code states that the CAISO "shall ensure efficient use and reliable operation of the transmission grid..." However, critics contend the CAISO has acted beyond statutory direction to advocate and institute changes to the electricity markets that have resulted in higher prices to customers and less reliability to the grid.

CAISO operations have also been criticized as largely staff-driven, leaving the impression that the governing board either is unaware of, or indifferent to, major policy and management decisions. The most well known example took place in late 2000 when CAISO staff unilaterally took action to suspend price caps on electricity during the energy crisis.

SELECT COMMITTEE QUESTION

1A. What do you believe to be the core mission of the CAISO: ensuring grid reliability or overseeing and facilitating electricity markets? When the two are in conflict, which mission should take precedence?

ANSWER:

The core mission of the CAISO is to reliably operate the power grid consistent with our statutory authority. That can only be done with planning and managing transmission resources for grid reliability in both the short run and long run. Workable regulated markets are an integral part of this process. As a Board, our responsibility is to act in an open and transparent process to accomplish this core mission.

Operating the transmission grid, managing the California electricity control area, and administering a limited spot wholesale electricity market are integral parts of our mission. We accomplish this through careful planning and operation of the transmission grid, in combination with administering an imbalance electricity market during real time. The CAISO utilizes a transmission planning process designed to use the grid more efficiently and identify and address problems with reliability, both in the short-term and long-term. Transmission projects are identified through a public process involving members of the general public, transmission owners (including investor-owned and municipal utilities), the CAISO and state and federal regulators and policy makers, with input received from affected landowners and interested environmental groups. This open and transparent process assures that the transmission system is and will be built for reliability and seeks to balance environmental and economic concerns.

The majority of electricity needs of California families and businesses are met through bilateral contracts that are reviewed under a regulated framework. This represents almost 95% of the electricity consumed in the CAISO control area. The spot electricity market the CAISO runs meets the remaining 5%. The CAISO's responsibility is to assure delivery of this energy from a variety of generation sources to the users of the energy ("load") in an open and non-discriminatory manner. The small amount of electricity acquired through the CAISO markets is used to maintain the reliability of the grid – to keep the system balanced, respond to line and generation outages, and address any errors in the daily forecast for load.

SELECT COMMITTEE QUESTION

1B. How would you describe the role of the CAISO Governing Board and the role of the staff? Who should set policies on grid management? Should staff be allowed to make policy decisions without input from the board?

ANSWER:

I believe the role of the Board is to set policy and strategic direction, while the role of management is to run the business. The corporation's and Board's authority are set forth in various state statutes and codes as well as in the CAISO tariff and corporate bylaws. The CAISO Board is responsible for ensuring compliance with those obligations and guidelines. This is done by establishing policies and conducting periodic reviews. One example of such a periodic review is the Board activity in recently expanding its committee structure to get more involved with management in reviewing corporate policies. This Committee structure allows Board members to execute their role as architects of ISO policy while taking advantage of the depth of expertise found in ISO management and staff, as well as input from members of the public and state policy makers.

The Board has created an informed and responsive committee structure by placing a Board member with subject matter expertise in a position to interface between Board and staff. The new management team has been directed to and clearly expects to always get prior Board review and approval of all policy decisions, and is committed to working together with the Board as a team. Our goal is one of no surprises.

2. Expenditures and Costs to Ratepayers of CAISO Operations

SELECT COMMITTEE COMMENT

Municipal utilities and other parties have criticized the CAISO for its costly operations, paying very high salaries and benefits to its employees, and generally being profligate with transmission ratepayer funds. Your CEO, for example, is paid a salary of approximately \$500k plus benefits. They assert that the CAISO has no enforceable budgetary constraints and no real incentive to contain its costs.

In recent comments, Federal Energy Regulatory Commission (FERC) Commissioner Kelleher suggested that FERC needs new "tools" to regulate Regional Transmission Organizations (RTO's) like the CAISO because non-profit corporations cannot be regulated by denying costs in their rate base.

SELECT COMMITTEE QUESTION

What is your view of the costs of CAISO operations including staff salaries? Do you believe that CAISO staff and administrative costs are higher than most other RTO's? If so, what steps do you support to lower those costs? Specifically, do you support the establishment of enforceable budget targets for the CAISO?

ANSWER:

A top Board priority is to control costs and ensure that ISO operations costs continue to come down while efficiencies are maintained. While the projections for future costs continue to decline, the challenge to this new Board and management team is to do more. Two specific initiatives that I am expecting to further reduce our costs are the completion of the market redesign and technology upgrade project, or MRTU, and an outside, unbiased review of the CAISO organization and costs. In consultation with the Board, the new CEO has undertaken a total review of all corporate operations to seek possible cost and organizational efficiencies. We should soon have feedback on the proper alignment of the organization to achieve our corporate objectives in a cost-effective manner.

As to completion of MRTU, this is a start up effort that will benefit from careful oversight. I have spent most of my professional career doing start-ups and turn-arounds. CAISO never finished as a start up organization. It has been too often in crisis mode and, with proper guidance from the Board, must quickly change into a strong ongoing organization that is recognized for adding value. While the MRTU project is in the development stage, we have incurred costs of operating and maintaining existing computing systems while we undertake the intensive effort of designing new markets and computing systems to run the markets and manage the grid. Completion of this project will allow the CAISO to streamline operations and achieve the greater cost savings being called for by market participants and critics. While the Board directs the alignment and stabilization of the corporation, enforceable budget targets will be key part of the solution.

The Board has learned that higher base compensation is needed for the CAISO to recruit competitively given the defined benefit pension plans and retiree medical benefits offered by many municipalities and Investor Owned Utilities. And though outside compensation consultants have confirmed that the CAISO pay and benefits package is very comparable on an aggregate basis with other ISOs/RTOs, we will continue to search for "tools" to contain costs.

3. Market Redesign and Technology Update

The CAISO has undertaken an effort to update the policies and technology it uses to oversee the state's electricity grid. This effort is referred to as the Market Redesign and Technology Update, or MRTU.

Among other things, the MRTU proposes a redesign of the bulk transmission markets, including the use of "locational marginal pricing (LMP)", a market-driven pricing mechanism that sets energy prices at hundreds of transmission "nodes" on the grid and allows the market to determine transmission and electricity costs to reduce transmission congestion. Consumer groups, municipal utilities, and others have expressed strong concerns about letting market forces determine

electricity costs, claiming it will drive those costs up.

SELECT COMMITTEE QUESTION

3A. *Do you support the CAISO staff proposals to implement the MRTU, including LMP? What steps do you support to protect businesses and consumers from higher electricity/transmission costs should the CAISO proceed with the MRTU?*

ANSWER:

As a businessperson I managed one of California's larger fresh fruit and vegetable operations, was paying too much for power, and came to the ISO with the simple goal of lowering electricity prices by improving transmission and its use. I support the staff proposals to implement MRTU and LMP and the consumer safeguards that have been factored into the project such as aggregating the wholesale LMP price. I believe that MRTU has become even stronger with the scrutiny of the Board and the new CEO. While I may not be a technical expert in market design, I am satisfied that the ISO Board provides and will continue to provide the oversight to ensure that we are on a path that offers the best future protection for all consumers.

One critical component of MRTU is that it will provide greater price transparency and result in clear price signals that will guide California infrastructure investment decisions to place additional generation and transmission in locations where it is most needed and effective. This will serve to ensure that in the long run, transmission and generation infrastructure will be built at locations on the grid that will best serve consumers in terms of reliability and reduced cost.

The LMP framework will improve the management of transmission congestion within the ISO control area. Recent years have seen dramatic increases in frequency of congestion within the ISO control area, and consequently increased risk to reliability as well as increased costs associated with managing this congestion. One feature of the proposed LMP framework is that it will result in measurable improvements in the management of transmission congestion within California. The MRTU / LMP framework will manage this congestion more effectively and will result in benefits to consumers through improved reliability and more efficient congestion management.

Finally, the current ISO market structure contains only a real-time imbalance energy market. There is no day-ahead spot market for load and generation to meet one another to satisfy load needs in this time frame. The MRTU model will include both day-ahead and real-time spot electricity markets. This expansion will provide an additional opportunity for load-serving entities to meet demand at an agreeable price before heading into real-time, as well as additional sales opportunities for generation that will improve their prospects for revenue

adequacy. The MRTU day-ahead market must have the necessary market power mitigation measures to assure that California's wholesale spot electricity markets are competitive places to conduct transactions, and I am committed as a Board member to assure that those protective mitigation measures are put in place.

SELECT COMMITTEE QUESTION

3B. What is the status of the MRTU? Has the CAISO governing board set a deadline for MRTU implementation, and will it meet that deadline? How much are transmission customers paying for the CAISO to perform and implement the MRTU?

ANSWER:

In July-2004, the Board authorized the MRTU budget of \$139 million (including contingency) with a target completion date of February 2007. Through the CAISO Operations committee of the Board, we constantly monitor the progress of the project. Although the project implementation is currently on schedule to be met, I am most concerned that we do the MRTU implementation process correctly and within budget. By that I mean that we do not switch to the new market until all systems have been successfully tested, including systems maintained by public and private grid users. Further, we want to make sure that state energy policy issues such as generation resource adequacy are aligned with MRTU and LMP to protect the California economy. That will require continual communication with all parties and an honest assessment of what is working and what is not.

4. Summer 2005 Energy Supply Concerns

SELECT COMMITTEE COMMENT

The CAISO Summer Assessment for 2005 predicts there should be adequate energy supplies to meet a growing demand for power, but states that "reserve margins may narrow substantially if there is an "unusual heat wave or other adverse conditions." Other state agencies have disagreed with the CAISO assessment and said that there are sufficient supplies to meet demand this summer and beyond.

SELECT COMMITTEE QUESTION

Do you agree with the CAISO staff assessment for Summer 2005? To the extent you agree with the assessment, and demand exceeds supply this summer, do you see the CAISO's role as facilitating action by the energy markets to solve this

problem, or stepping into the breach itself, similar to the purchasing role it played in 2000-2001?

ANSWER:

The CAISO has conducted a comprehensive assessment for Summer 2005. I have reviewed this assessment and am assured that contingency plans are in place to meet any contingencies that may arise this summer. I generally agree with staff's assessment that under normal conditions, the reliability of the transmission system will be maintained. However, as we have learned from past experience, the combination of tight margins and adverse conditions may present daunting challenges. We are grateful that major changes have occurred to ensure that the crisis of 2000 will not be repeated. The majority of California's power needs are now bought in advance, there are unprecedented levels of cooperation among government entities involved in energy policy, and there are plans in place to minimize the possibility of the CAISO having to step into the breach if demand exceeds supply. An example of this is the CPUC long-term procurement policies that require investor-owned utilities to secure their power needs and reserves in advance of the hot summer months. This reliance on forward, non-CAISO markets is our preferred method to serve California customers and assure system reliability. In 2000-2001, that was not the case and the CAISO was obligated to purchase power in the spot market in volumes never expected nor intended. I am also very glad that a simulation is being run to test the assumptions and conclusions of the Summer 2005 assessment. This first-of-its-kind simulation should provide insights into any additional steps that may be appropriate for parties to take to maintain grid reliability.

Keeping the lights on is the mission of the CAISO. In large measure we accomplish that by providing information, such as the Summer 2005 assessment and conducting the summer simulation, so policy makers and market participants can take appropriate action. CAISO actions beyond that are considered a last resort. My view is that the biggest challenge is not this summer, but planning for the summers ahead. Taking action years ahead gives us the best chance to do the right thing for the California economy and environment.

5. Protection of Public Health and the Environment

Public Utilities Code Section 345.5 (b)(3) requires the CAISO to manage the grid in a manner that is consistent with laws for the protection of the public's health and the environment. Yet, during the energy crisis of the early 2000's, in order to ensure sufficient electricity supplies, the CAISO took actions to require operation of power plants in a manner that abrogated air regulations, and at times, increased air pollution during peak smog season.

SELECT COMMITTEE QUESTION

5A. What steps do you support to ensure that environmental and public health impacts associated with the management of the power grid are taken into account in CAISO management of the grid?

ANSWER:

I have always been concerned with the environment and am committed to directing continued CAISO compliance with environmental laws and regulations. As Chief of Staff to State Senator Peter Behr, one of the state's leading environmentalists, and as the first person to serve as Undersecretary of the newly formed CAL-EPA, I have always taken the environment and public health into account in my decision-making. As a member of the CAISO Board of Governors, I voted in favor of the CAISO Environmental Justice policy in December 2004. Earlier, I indicated that a primary reason for my participation on this Board is to find ways to use the transmission system more efficiently. Efficient use of the system and encouraging CAISO continued support of the CPUC resource adequacy initiative will result in environmental benefits to California.

SELECT COMMITTEE QUESTION

5B. Has the CAISO taken any actions to encourage so-called "environmental dispatch" of power plants to ensure the cleanest and least polluting plants are run before dirtier plants are brought on line?

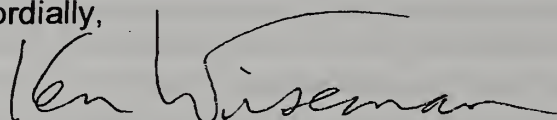
ANSWER:

At present, CAISO does provide preference to renewable resources such as wind generation and has created programs that help with the integration of this resource with both markets and real-time operations. We expect the amount of renewable resources in California will grow by a substantial amount in the next five years due to the requirements of SB 1078 – The California Renewables Portfolio Standard. CAISO is working with the state commissions, the utilities and the owners of these new environmentally friendly facilities to eliminate barriers to their deployment and mitigate some of their operational impacts. This will require new efforts to analyze how all the various types of generation resources can be blended together to ensure the reliability of the power grid, lowest costs for consumers, and the most environmentally friendly energy supplies possible.

Although full environmental dispatch is not yet a reality, I have seen progress towards utilization of clean and least polluting means to meet California load. The price signals that will be a feature of the MRTU / LMP framework will result in transmission and generation infrastructure investments that will relieve existing transmission constraints. Many times these constraints have lead to older, less

efficient and dirtier generation being run to meet load. Transmission infrastructure upgrades will mean California can utilize newer and more efficient generation. It will also send effective signals for the construction of generation in locations that are critical to reliability. These infrastructure improvements will serve to achieve results that are complementary to environmental dispatch. Seeking environmental and economic balance is why I sought to return to the CAISO. We have an extraordinary opportunity in California to show the world how it can be done.

Cordially,

A handwritten signature in black ink, reading "Ken Wiseman". The signature is fluid and cursive, with a large, sweeping "K" and a long, horizontal stroke for the "W".

Ken Wiseman
Chairman
California ISO Board of Governors

Cc: Senator Jim Battin, Vice Chair, Senate Rules Committee
Senator Roy Ashburn, Member, Senate Rules Committee
Senator Debra Bowen, Member, Senate Rules Committee
Senator Gil Cedillo, Member, Senator Rules Committee

266 Scofield Drive
Moraga, CA 94556

June 24, 2005

The Honorable Debra Bowen
California State Senate
State Capitol, Room 4040
Sacramento, CA 95814

Dear Senator Bowen:

Thank you for the opportunity to reply to several questions you had regarding my appointment to the California ISO Governing Board. Please do not hesitate to call me on my cell phone at (559) 304-4071 if you or your staff needs more information than provided below.

1. What are my qualifications and experience in public service and non-profit governance?

In my career I have served on over thirty Boards and Commissions, most of them non-profit and the majority associated with the production of agricultural commodities. Two Commissions, both of which I served as Chair, had significant public policy implications. Twenty years ago I lead the "Kern County Commission to Establish New High School District Boundaries." Kern County was out of compliance with civil rights mandates and we had to make significant changes. With lots of open process, patience, and diplomacy we brought the County into compliance without violence or litigation. In 1994 I chaired the "California Commission on External Review of the State and Regional Water Boards". We made significant recommendations, which were implemented with the support of both the business and environmental communities. I had been able to find common ground with these groups when I served as the first Undersecretary of the newly formed Cal-EPA in 1992. I had credibility in that position because for two years I had been Chief of Staff to State Senator Peter Behr, one of California's most noted environmentalists, before moving to Kern County and managing one of the San Joaquin Valley's largest fresh produce operations.

I served on the original CAISO Board of Governors from start-up in 1998 until January 2001. I was elected to fill one of the end-use consumer seats. Doing a total startup of the California ISO (as opposed to the Eastern models which evolved over time) was no easy task. I am proud to be part of the team that dealt with the original agreements, tariffs and rules that helped keep the grid reliable, even during the toughest of times.

JUN 23 2005

Having this experience does put me in a position of having some institutional knowledge that can be helpful with making the right choices going forward. To be sure, the lessons from the 2000-2001 energy crisis were painful at best, but they were in fact "lessons" that compel action and a better framework going forward. I intend to use my knowledge of the past and put the CAISO in a position to rely more on proven policies and structures that have worked elsewhere rather than to always try and pioneer new solutions. At this point in time, the CAISO can now learn from the mistakes and successes of other ISOs that have joined us in the journey to find the right balance of markets and regulation.

2. What are my qualifications and experience in electric service in general and transmission operations in particular?

Having been part of the agricultural community all of my life, I acquired a great deal of knowledge and practical experience about how important it is to have reliable and affordable electric service. During my career, I have been both a small and large consumer of electricity, serving on the Board of an irrigation district that had significant transmission contracts. I am acutely aware of the regulatory impacts made by FERC, the PUC, the Energy Commission and the CAISO. Having been a part of the CAISO Board for three years, I gained a great deal of knowledge about how the system and markets work (or don't work!).

3. Are you affiliated with any actual or potential ISO market participant?

No, my current employer, ACS (Affiliated Computer Services) is unrelated to energy. ACS is a Fortune 500 technology company that specializes in business process services. I manage 80 employees providing workforce services to the County of Fresno. For the past seven years I have also had a contract with RMC, an environmental engineering firm based in Walnut Creek, to provide services as a water projects mediator for the Counties of Monterey and Santa Cruz.

4. Have you received any income during the past two years from any ISO market participant or any other entity doing business with the ISO?

No.

5. Do you have any other professional activities or financial interests that might constitute an actual or apparent conflict with your ISO duties?

I can think of nothing that would appear to conflict with my CAISO duties. My wife, as a Justice on the California Fifth District Court of Appeal, can be called to review PUC cases where CAISO may have an interest. She has made the decision to disqualify herself from hearing all such cases.

6. Are you aware of any vetting of your appointment with FERC?

Yes. I was told my name was disclosed to FERC as a possible appointee to CAISO.

7. What is your opinion of California's dispute with FERC regarding the appointment process and qualifications for ISO governing board members?

I believe it is in the interest of the State of California to find a peaceful resolution to the governance dispute so that we can move on with more important matters. The FERC lost an important court case, but continues to be concerned with potential lack of independence of CAISO Board members. I supported a proposal that the CAISO recently put before FERC to propose a selection process including specific qualifications for Board members and an opportunity for stakeholders to comment on potential appointments. While the proposal is not binding, I believe it is a step in the right direction. Putting the governance dispute behind us and having a more positive and constructive relationship with FERC will benefit all California consumers.

8. What benefits does the ISO offer to consumers?

The primary benefit is independent, nondiscriminatory access to the transmission system. I have consistently heard from suppliers of electricity since the inception of the CAISO that it is easier to move power throughout the grid. The CAISO not only relieved consumers of "pancaked rates" (the toll that would be charged going through each utility territory) but also prevented utilities from barring access to the system in favor of their own generation. While the past has included a great deal of tension between the CAISO and the state where FERC was involved, the more positive side is that the CAISO provides a mechanism by which state and federal policies can be harmonized and coordinated. For example, we are working very hard as a Board to ensure that CAISO management coordinates market redesign activities with the resource adequacy rules being developed at the Public Utilities Commission. The CAISO is also well suited to recommend appropriate transmission expansion projects since it has a "statewide view" of the grid and a highly accurate picture of transmission congestion.

9. What are the most significant aspects of the operation, management and governance of CAISO that need improvement? How do I propose to accomplish needed improvements?

There are a few key areas I would highlight that need particular attention. The first is to address CAISO costs – they must and will be reduced. Another area is to reform the CAISO governance, having now set up a committee structure to ensure more detailed oversight by the Board. One of the biggest areas technically that needs fixing involves the congestion management as well as outdated and deficient computer systems. The Market Redesign and Technology Upgrade (MRTU) project goes a long way to fix both congestion management and deficient or outdated software. As Chairman of the Board, I intend to see that the MRTU project delivers on intended benefits and does so in a cost efficient manner. With respect to cost, as I stated to the Senate Rules Committee in an

earlier set of questions, the CAISO Board and new management are intensely focused on the cost of CAISO operations and services. Yakout Mansour, our new CEO, has with unanimous Board support embarked upon a major realignment and review of CAISO operations to maximize efficiency and reduce costs for the benefit of all consumers.

10. The ISO's salary structure and operating costs appear to be significantly higher than comparable ISOs, or other comparable non-profit corporations. Do I believe these expenses are justified? Why or why not?

I am not aware of comparable non-profit corporations that are not ISOs, but with respect to comparing with other ISOs, I believe the CAISO costs are higher at present due to the fact that CAISO was a complete and total start-up unlike Eastern ISOs that formed over time. The trend for CAISO relative to other ISOs is downward. However, as I stated in previous responses to Senate Rules, it is the mission of the CAISO Board and new management to continue to aggressively contain costs. Budget targets are in the process of being put in place and in a few years significant debt retirement will help reduce CAISO costs. In the next two weeks we will have a definitive plan to immediately reduce costs and quickly lower the grid management charge.

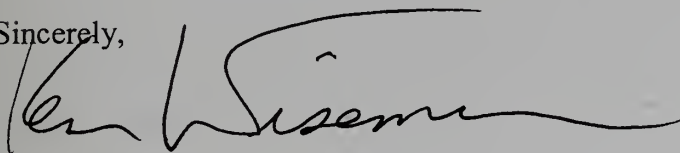
The CAISO pays employees competitively, taking into consideration that IOUs and municipal utilities are equipped to offer defined benefit plans, stock options or other medical/retiree programs that cannot match the CAISO 401K plan. The CAISO routinely loses employees to SMUD and WAPA, for example, being the two utilities closest in proximity.

11. Please explain the root cause of California's "energy crisis" of 2000-2001.

Many forces were at play to create the "perfect storm." First, the original structure of the market was largely at fault (eg, requiring utilities to purchase from the spot market; regulatory barriers to long term contracts, market power created with significant divestiture of utility-owned generation, etc). The restructured market worked until California experienced a supply imbalance. This got worse when market rules were inadequate to deter manipulation by power suppliers. The biggest problem was that the utilities did not have authority to enter into long-term contracts. We learned in 2001 when the state took control of energy purchasing that long-term contracts are the key to stable energy prices. We should have managed the divestiture of power plants so that utilities had some "vesting" rights to the plant output until market power could be adequately evaluated. The industry was restructured when the market had enough power so this was not a concern. This accelerated divestiture, combined with the inability to hedge prices with long- term contracts, led to the "energy crisis". At this point we are better off looking forward. It is essential that the future framework must include a stable investment climate that is environmentally friendly, has resource adequacy obligations, clear long- term procurement rules and a stable market design including market monitoring and efficient market rules.

Again, thank your for the opportunity to clarify any questions or concerns you have regarding my appointment to the ISO Board.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Wiseman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ken Wiseman

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CALIFORNIA ISO

August 19, 2005

To the Members of
Senate Rules Committee
State Capitol
Sacramento, CA 95814

Dear Senators:

It is my pleasure to provide you with additional informational on some issues that have been raised in connection with my Senate confirmation hearing August 24, 2005. First, there have been some questions about my voting record pertaining to my support of price cap motions from the energy crisis during my prior service on the CAISO Board. My official record is attached and you can see on multiple occasions I voted for price caps. Second, I include information about the "intertie bid" issue that arose within the CAISO market earlier this year. Finally, I am providing you with information about why we believe the CAISO Board nominee recommendation procedure filed before FERC in June is of benefit to California consumers.

With regard to the intertie issue, the CAISO management discovered earlier this year an increase in costs associated with bids at transmission inter-ties with neighboring control areas. While the CAISO market design has been improved to increase and encourage badly needed import bids into the CAISO system, an inadvertent outcome of the design resulted in "uplift charges" that were unwarranted and are, as explained below, under review by the appropriate authorities. While the total uplifts associated with this particular market clearing rule are approximately \$18.5 million, I am told by our Market Monitoring Department that approximately two-thirds of these uplifts may be due to legitimate bidding practices, with about one-third, or about \$6 million due to practices that might be considered "gaming" or "manipulation" under current CAISO and FERC market behavioral rules.

The CAISO Board took immediate action upon learning of the issue (through emergency teleconference, in advance of regular board meeting) and directed CAISO management to take immediate corrective actions to halt the occurrence of the uplift charges and to submit the matter to the FERC Office of Market Oversight, as well as to seek guidance from the CAISO Department of Market Analysis and the CAISO Market Surveillance Committee. The CAISO management immediately crafted an interim solution and is working on a longer-term fix.

You may have been told that the CAISO already had authority to intercede and punish the "bad behavior" and should seek refunds or other penalties from FERC. To clarify this

matter, it must first be noted that the CAISO did not have the authority to enforce any of the market behavior rules set forth in the CAISO's Enforcement Protocol or impose penalties at the time of this particular event; only FERC had such authority. At the time this behavior occurred, the CAISO only had the ability to refer the matter to FERC, which we did. Further, although we have gained significant enforcement authority since that event (as explained further below), this authority still does not include direct authority for the CAISO to impose penalties for gaming or market manipulation. We believe we have been granted enforcement authority that is equal to, or greater than, any other ISO/RTO in the country to date, but FERC remains the backstop for wholesale market oversight for interstate energy commerce.

The intertie bid matter has been formally referred to FERC as a potential violation of CAISO and FERC market behavioral rules and is under investigation by FERC. The CAISO has provided extensive data and analysis to FERC as part of this investigation, based on bidding and scheduling information available to the CAISO.

Please understand that I am wholeheartedly committed to getting to the bottom of this and any other situation that comes before me that could appear as potential market manipulation. Further, I would not hesitate to force the matter at FERC if I feel that it is not receiving appropriate attention or action on their part. The fact of the matter is FERC cannot punish market participants before it is clear they have violated a market rule.

As to the matter of the CAISO Board nominee review process recently filed at and approved by FERC, you may be interested in better understanding our reasoning behind this filing and why we believe it is a positive thing for California. The CAISO governance issue has been a thorn in the side of the state since the inception of the CAISO. While the D.C. Circuit's court decision clearly sided with the state on the specific issue of selecting a board structure according to state law, the ruling did not decide the matter of independence per se. Further, the court decision expressly recognized that there were other actions that FERC might take that could adversely affect the CAISO's status as an independent system operator. FERC expressed its concern in several orders about the independence of the CAISO Board and indicated its reluctance to grant certain authorizations and benefits to the CAISO, so long as independence remained an issue. As a result of the new Board recommendation process, FERC has now found that the CAISO satisfies its independence requirements. This puts to an end the longstanding dispute on governance without giving up the right of the Governor to select and appoint CAISO Board members and the right of the Senate to confirm CAISO Board members. Essentially, the CAISO Board's actions have brought favorable resolution to an extremely sticky issue without having to compromise state law in any way or give up any rights held by the state.

The CAISO Board believed that it was worth an attempt to put forth a proposal that fully retained and in no way compromised the authority of the Governor and the Senate. The additional information on appointments provided to the Governor and Senate will be similar to that of the appointment procedures of other ISO Boards, while fitting completely within California law. In our minds, the advantage the CAISO might obtain from filing a new Board recommendation process was the opportunity to obtain some badly needed authority from FERC to complete and complement a well functioning wholesale market.


In my view the bet paid off. FERC issued its order finding that the CAISO satisfies its independence requirements in late June and ruled in the CAISO's favor on three significant issues shortly thereafter. First, FERC had, up until then, refused to permit the CAISO to impose penalties under the CAISO's "Oversight and Investigation" (O&I) Enforcement Protocol due to FERC's concerns regarding CAISO independence and the Board selection process, and ruled that only FERC could enforce the Enforcement Protocol until such time as the CAISO was found to be independent. As a result of FERC's finding that the CAISO now satisfies its independence requirements, FERC issued an order providing the CAISO with both investigative authority and the authority to impose penalties for certain specific improper behaviors that are objectively identifiable under the Tariff. Thus, to sanction such specified behaviors, the CAISO will not have to consult with FERC first, although penalized market participants will have an opportunity to appeal any sanction to FERC. As indicated above, however, the CAISO does not have the authority to impose penalties for market manipulation.

Second, in an order addressing the CAISO's recent market redesign conceptual filing, FERC approved strong local market power mitigation authority that greatly enhances our ability to protect consumers when we implement our wholesale market design changes. We believe FERC hesitated to grant this authority previously based on both its perception of our governance structure, as well as a perceived lack of commitment to market design changes that solve intrazonal congestion and other issues. To be fair, it is also likely true that FERC held out on this authority pending specific progress on the part of the state (CPUC in particular) relative to resource adequacy requirements. Finally, while unfair in my opinion, FERC had declined to rule on the CAISO's filed generator interconnection policies and procedures because the CAISO had justified such policies and procedures based on an "independent entity variation" standard. FERC had ruled that because the CAISO Board was not independent, the CAISO was not entitled to rely on the "independent entity variation standard. As a result of its order finding the CAISO Board to be independent, FERC recently approved important generator interconnection policies and procedures that are necessary for clarifying rules for bringing on more generation in California.

These are just a few examples of how this proposal for submitting suggestions to the Governor regarding Board nominees, has in fact, helped to ease the rift with FERC and place the CAISO and California in a better position to deal with FERC in the future.

If you need more information, please feel free to call me. I can be reached at (559) 304-4071.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Wiseman", with a long horizontal flourish extending to the right.

Ken Wiseman
Chairman, Board of Governor's
California ISO

Cc: Senator Joe Dunn
Senator Martha Escutia
ISO Board Members
Yakout Mansour, President and CEO, California ISO

ATTACHMENT

TO: SENATE RULES COMMITTEE MEMBERS

FROM: KEN WISEMAN

**RE: CALIFORNIA INDEPENDENT SYSTEM OPERATOR
HISTORY OF PRICE CAP VOTES FROM 2000**

March 22, 2000 – Keep price caps at \$750 until 11/15/00; *passed* (Wiseman voted yes)

June 28, 2000 – Temporarily reduce price caps to \$250 from 7/1 – 10/15/00
failed (Wiseman voted no)

Temporarily reduce price caps to \$500 from 7/1 – 10/15/00
passed (Wiseman voted yes)

July 6, 2000 – Temporarily reduce price caps to \$250 from 7/1 – 10/15/00
failed (Wiseman voted no)

August 1, 2000 – Temporarily reduce price caps to \$250 from 7/1 – 10/15/00
passed (Wiseman abstained)

September 7, 2000 – File Tariff amendment to extend ISO price cap authority
beyond 11/15/00 – *passed* (Wiseman voted yes)

Continue \$250 price cap beyond 10/15/00 – *passed*
(Wiseman voted yes)

October 4, 2000 – Adopt load differentiated price caps – *failed* (Wiseman not
in attendance)

October 26, 2000 – Adopt load differentiated price caps – *passed* (Wiseman
not in attendance)

All of the minutes of these meetings are available on our website (everything was done in open session and fully available to the public).

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Elizabeth T. Lowe
25 Panorama Court
Danville, CA 94506

VIA FAX AND REGULAR MAIL

May 26, 2005

Honorable Don Perata
Chairman, Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Senator Perata:

I am pleased to respond to your questions of May 6 and May 12, 2005. It is with great honor that I approach my position on the Board of Governors for the Independent System Operator. As a professional with almost 20 years experience in various aspects of the California energy markets – from independent power to customer energy strategy consulting to deregulated markets to my current role in promoting energy efficiency projects – I feel well positioned to work with the State and the staff of the ISO to improve grid reliability and to bring the various parties together through an improved stakeholder and customer relations process.

My background is very different from other Board Members and from the ISO staff. I work in the energy field developing and implementing energy efficiency projects yet I am not affiliated with any of the stakeholders at the ISO. My background and relationships across the industry – from customers to Investor Owned Utilities to Public Power companies to generators – provide me with a breadth of knowledge across various segments of the energy markets, but more importantly, with a focus on the customers consuming the power at the meter. I understand the ultimate importance of reliability of power to these customers at a fair price from resources that result in limited harm to the environment. These customers have suffered from the energy crisis and from slow economic growth and high unemployment and want stability in the markets serving them.

Included in my goals are the following:

- To improve coordination among the various State agencies – the CPUC, the CEC - as well as the Administration and Legislature
- To improve coordination between the stakeholders – customers, utilities – investor-owned and municipal, transmission owners, generators and other market participants
- To streamline processes at the ISO ensuring efficient use of resources
- To promote the effectiveness of the ISO in the marketplace at a reasonable cost to consumers
- To make sure that the ISO does not lose focus on the ultimate user of the electricity that is bought, transmitted and sold.

Question 1A. What do you believe to be the core mission of the CAISO: ensuring grid reliability or overseeing and facilitating electricity markets? When the two are in conflict, which mission should take precedence?

I believe the core mission of the ISO is both to ensure grid reliability and to facilitate electricity markets. Ultimately, grid reliability and keeping the lights on is key and takes precedence. Of course, "keeping the lights on" is mere shorthand for a variety of different ISO responsibilities (either alone or in concert with other state energy bodies). These responsibilities include transmission planning and real-time scheduling and power balancing, as well as the administration of limited markets for the relatively small amount of reserves and real-time energy needed to keep the entire western electricity grid in balance and protected against unexpected contingencies. However, the artificial distinction between "reliability" and "market facilitation" concepts are not mutually exclusive; efficient markets are useful only in facilitating grid reliability at the lowest cost, and grid reliability is also a product of transmission and generation resource adequacy as well as a properly designed market. This new Board expects to regularly reexamine the role of markets in maintaining grid reliability at reasonable prices, and to continue to seek out other ways to assist the ratepayers of the state of California.

Question 1B: How would you describe the role of the CAISO Governing Board and the role of the staff? Who should set policies on grid management? Should staff be allowed to make policy decisions without input from the board?

The role of the ISO Governing Board is to set the policies and strategic direction of the ISO. I take the responsibility as a Board member very seriously and am committed to be an active Board member. Changes in leadership at the ISO – at both the Board and staff levels – have allowed the organization to move forward, and this Board has already begun the process of establishing a more appropriate allocation of responsibilities between the Board and staff. Under this new regime, and certainly regarding my expected personal actions, I do not expect the staff to make major policy decisions without Board review and approval. Board members will rely upon staff (as well as other state energy agencies and officials and members of the public) to provide analysis and details necessary for decisions to be made, as well as recommendations for our consideration. Nevertheless, it will be the ISO Board that assumes ultimate responsibility for crafting anything related to development of policies and overall strategies – and directing staff to implement those policies and strategies and run the ISO on a day-to-day basis.

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Question 2: What is your view of the cost of CAISO operations including staff salaries? Do you believe that CAISO staff and administrative costs are higher than most other RTO's? If so, what steps do you support to lower those costs? Specifically, do you support the establishment of enforceable budget targets for the CAISO?

I view cost management as a primary element to a position on the ISO Board and of paramount importance to me, particularly given that it is the ratepayers of the state who eventually pay the ISO's bills. It is my understanding that some ISO base salaries may appear high relative to other ISO's and municipal and investor-owned utilities, but, in part, that is because comparable organizations provide lucrative benefits, including retirement benefits, that comparable positions have at other private or public companies and governmental and municipal bodies.

To avoid jumping to conclusions without full information, I must comment that evaluating the costs of the organization and developing reasonable budget targets consistent with other models is a very appropriate task for a new Board member, and one that I look forward to beginning. The ISO is in the process of going through an internal realignment evaluation – a top-to-bottom review of the organization that should reveal more about the costs of the organization overall and the reasonableness of salaries and benefits. My position on the Audit Committee of the Board will allow me to take a lead on this effort. In addition, ISO staff incentive compensation has been based, in part, on achievement of the budget targets established by the Board; I believe this to be an important process that will continue in the future.

Question 3A: Do you support the CAISO staff proposals to implement the MRTU, including LMP? What steps do you support to protect businesses and consumers from higher electricity/transmission costs should the CAISO proceed with the MRTU?

Much of the expected expenses in the so-called "MRTU" project will be used to update key ISO technology systems and software necessary for certain overhauls to ISO systems necessary to maintain grid reliability. These upgrade costs constitute a major part of the overall project budget. Nevertheless, whether this includes a full implementation of the market redesign portion of the MRTU project as currently proposed, or some reduced scope that solves some of the technical gaps at the ISO that cannot continue to exist if reliability is to be maintained, will be a significant focus of my service on the ISO Board.

Transparency is an essential goal of the ISO, in its operations, policy-making decisions at the Board level, and operation of its limited reserve and balancing markets. I think that LMP should result in more transparency of prices that should help lower the overall cost to consumers of operating the grid. LMP will also provide the price signals important for attracting private and public investment in generation and transmission facilities, as well

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as the best locations for these facilities. I will be attentive to potential increased initial costs for customers, but ultimately I believe that this system should reduce costs in the long run through a better-managed market, improved systems, reduced downtime and avoided blackouts. I intend to vigilantly focus on this essential requirement for efficient market redesign, and remain committed to altering the direction of the ISO should I no longer feel that these efficiencies and cost reductions are foreseeable.

Question 3B: What is the status of the MRTU? Has the CAISO governing board set a deadline for MRTU implementation, and will it meet that deadline? How much are transmission customers paying for the CAISO to perform and implement the MRTU?

MRTU is currently on schedule to be implemented in its majority by Feb 2007, the deadline established by the Board. The currently approved budget is \$139 million, which is about equally divided between IT systems to support the redesigned market, including LMP and day-ahead markets, and IT systems and software to replace old outdated systems.

Question 4: Do you agree with the CAISO staff assessment for Summer 2005? To the extent you agree with the assessment, and demand exceeds supply this summer, do you see the CAISO's role as facilitating action by the energy markets to solve this problem, or stepping into the breach itself, similar to the purchasing role it played in 2000-2001?

I agree with the CAISO staff assessment for Summer of 2005 because it was developed in cooperation with the other State agencies involved in the energy markets, including the CEC and the CPUC. In terms of taking action in the energy markets, similar to 2000-2001, the marketplace is very different now from an energy commodity standpoint as compared to that crisis period. Utilities have been encouraged to contract and they have indicated that they have contracted to provide sufficient resources to meet their customer demand, and the long-term contracts signed by CERS have helped secure resources for the State. The ISO is the provider of last resort in any situation. With all of the other contracts and protections in place, and pressure to resolve Resource Adequacy issues with the utilities that would include energy efficiency and demand response, it is difficult to imagine a scenario where the ISO would need to unilaterally purchase power in the quantities it did during the energy crisis.

If demand exceeds supplies this summer, however, other programs such as voluntary load reduction and demand reduction programs should help. The ISO is coordinating with the utilities and State agencies to use a public appeal for assistance through voluntary reductions rather than resort to blackouts.

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Question 5A: What steps do you support to ensure that environmental and public health impacts associated with the management of the power grid are taken into account in CAISO management of the grid?

First, I am proud of the fact that California is a leader in the nation with respect to integrating renewable energy into the wholesale spot market. Second, I am committed to working to ensure that the CAISO has the appropriate transmission infrastructure necessary to accommodate the renewable energy being brought on to meet the State's Renewable Portfolio Standards. This means that we should be promoting a balance of new transmission and new generation that is consistent and complementary with the State's renewable objectives.

Let me also note that, effective demand response programs that incent customers to reduce peak demand in return for payments – i.e., paying for “negawatts”, not megawatts are an important component in meeting the state's overall energy demands. New transmission and generation is generally more environmentally friendly than the old units, simply because technology has changed and requirements to meet standards are stricter.

Question 5B: Has the CAISO taken any actions to encourage so-called “environmental dispatch” of power plants to ensure the cleanest and least polluting plants are run before dirtier plants are brought on line?

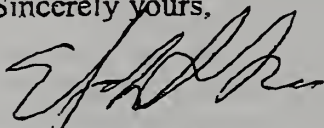
Renewable resources such as Wind Generation, Biomass Generation, and Solar are environmentally friendly and important sources of energy in California. The energy produced by these plants is given preference over energy from fossil generation as part of the daily dispatch of energy at the CAISO. The environmental impact of these resources is enhanced when CAISO can forecast their energy production sufficiently in advance and avoid starting up a fossil generating plant. CAISO has been working closely with the CEC and wind generation forecasting companies to improve the models and accuracy for forecasting wind generation energy production. The next step will be to expand this forecasting work to all of the other renewables so they can be properly represented in the daily energy dispatch.

After subtracting load that is covered by must-take generation, the CAISO dispatches power based on economic merit (least cost). Most of the time, the units that are most likely to be dispatched happen to be those with more efficient heat rates and, thus are cleaner. It is important to note that the CAISO operates the transmission system in compliance with all environmental laws and regulations.

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Thank you for the opportunity to respond to your questions, to describe my goals and to have the opportunity to serve the consumers of the State of California. I welcome additional questions and feedback and I look forward to meeting you during the confirmation process.

Sincerely yours,



Elizabeth Lowe

Cc:

Senator Jim Battin
Senator Gilbert Cedillo
Senator Debra Bowen
Senator Roy Ashburn
Ms. Nettie Sablehaus

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Mason Willrich: Answers to questions prepared by Senate Rules Committee and included in letter of May 6, 2005 from Senator Don Perata, Chairman, and follow-up letter of May 12 from Ms. Nettie Sablehaus, Appointments Director.

Statement of goals. What do you hope to accomplish during your service as a member of the CAISO governing board?

CAISO plays a crucial role in real time, 24/7, operation of the California transmission system which enables electric power produced in widely scattered locations throughout California and the Western Electricity Coordinating Council (WECC) region to reach electricity consumers within CAISO's control area at home, at work and at play whenever they individually flip the millions of switches under their control. CAISO, working with state and federal representatives, consumers, utility transmission owners and project developers, also plays a strategic role in planning and encouraging development of transmission network expansion projects. These actions increase grid reliability minimize transmission congestion, and enable incremental growth in power generation capacity in California and the WECC region to be located optimally from the viewpoint of system reliability and economic operation of the network as an interdependent whole.

With this vital role within the California electric power system in mind, as a member of CAISO's Board of Governors, my goals are to help guide CAISO toward achievement of the following corporate goals:

- O CAISO provides, and is recognized as providing, outstanding reliability and economic values to CAISO's end-use electricity consumers, participating transmission owners and other stakeholders and market participants.
- O CAISO plans for and accelerates development and construction of transmission expansion projects which are necessary to decongest the transmission grid it operates, thereby enhancing system reliability and providing economic benefits to California's electricity consumers.
- O CAISO minimizes fragmentation of its power control area and enhances cooperation with transmission operators in other California control areas and in the WECC region.
- O CAISO becomes a clearly recognized leader among independent system operators and regional transmission organizations in the western United States and nationwide.

1A. What do you believe to be the core mission of the CAISO: ensuring grid reliability or overseeing and facilitating electricity markets? When the two are in conflict, which mission should take precedence?

I affirm the core mission CAISO has adopted: "To be the preferred provider of superior electric power transmission service for the benefit of electricity consumers in California." That mission requires CAISO to sustain highly reliable operation of the transmission grid within CAISO's power control area in California, as well as effective coordination with other interconnected transmission grid operators in California, the western United States, British Columbia and northern Mexico. The interconnected electric transmission systems in the western United States are interdependent. There are no real islands. I believe "keeping the lights on" 24 hours a day, 7 days a week is CAISO's

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primary responsibility, a responsibility it shares with other transmission system operators comprising the regional membership of WECC.

I believe economically efficient administration of wholesale electricity markets within its power control area is an integral part of CAISO's responsibility for providing reliable transmission service. The vast bulk of power flowing through the CAISO operated transmission system is normally accounted for by utility self-generation and bilateral contracts between utilities and energy service providers, on the one hand, and independent power producers on the other. Nevertheless, the 3-4% of power flowing, especially during critical daily periods of peak demand, is scheduled by CAISO accepting bids for a wide variety of essential services in a "real time" market. These services -- to relieve congestion on the grid, to adjust for energy imbalances, and to assure small increases and decreases in power flows occur smoothly -- play vital roles in maintaining electric system reliability. Implementing effectively bilateral power purchases and managing spot market power transactions results in CAISO providing highly reliable transmission service, while simultaneously enabling the overall electric system to operate in the most economically efficient manner that is technically feasible within the constraints of the transmission system.

1B. How would you describe the role of the CAISO Governing Board and the role of the staff? Who should set policies on grid management? Should staff be allowed to make policy decisions without input from the board?

CAISO's Board sets overall policies for CAISO including grid management policies, reviews and approves strategic plans, annual budgets, capital expenditures, financial arrangements and major contractual commitments. The Board monitors implementation of plans and projects against milestones, operations against established performance standards and expenditures against previously approved budgets. A most important responsibility of the CAISO Board is hiring and, if appropriate, firing the Chief Executive Officer (CEO).

Under the CEO's leadership, the role of CAISO staff, is to operate CAISO within established policies so as to achieve or exceed established performance targets. The staff does not make policy. The CEO develops and recommends to the Board, for its approval, policies, plans, budgets, contracts and other proposals for major activity affecting CAISO operations. The CEO leads the staff, including a team of senior officers, inspires the entire staff to achieve outstanding levels of performance, and leads CAISO in its relations with stakeholders, governmental agencies, and other transmission system operators especially with the western United States. CAISO's Board should not micromanage the CEO or the staff.

2. What is your view of the cost of CAISO operations including staff salaries?

The average retail electricity price in 2005 is estimated to be 12.57 cents per kwh. Of that, CAISO general management charges, as approved by the Federal Energy Regulatory Commission (FERC), are estimated to be 0.084 cents per kwh, or 0.67% of the average retail electricity consumer's bill. I believe 0.08 cents per kwh is a reasonable price for consumers to pay CAISO for "keeping the lights on."

Do you believe that CAISO staff and administrative costs are higher than most other RTO's?

I believe CAISO staff and administrative costs are in line with survey data of the ISO/RTO peer group obtained by CAISO's human resources consultant.

If so, what steps do you support to lower those costs?

CAISO's CEO has underway a comprehensive study of CAISO to evaluate CAISO's organization, functions, and staffing in order to reduce costs and increase efficiency of CAISO operations. Without prejudging the outcome, I will examine carefully the results of this work in order to determine where I think cost reductions may be possible without reducing the quality and effectiveness of essential CAISO operations. I note that in the recent past, since the California electricity crisis of 2000-01, the gap between CAISO costs and other ISO/RTO costs has been reduced.

Specifically, do you support the establishment of enforceable budget targets for the CAISO?

In every for-profit and not-for-profit enterprise with which I have previously been associated, I have championed budget discipline. I am pleased that CAISO is an organization that is observing budget discipline. Performance within or below budget is currently a substantial factor in evaluation of overall organizational performance which determines CAISO incentive pay-for-performance awards annually. I believe budget performance as a substantial factor in incentive pay awards is one of the best components – both carrot and stick – of an “enforceable” budget target.

3A. Do you support the CAISO staff proposals to implement the MRTU, including LMP?

Yes, with caution. I believe major improvements are necessary and overdue in both the hardware and software which CAISO uses to achieve a dynamically reliable and economically efficient balance between variable demands and variable supplies of electric power flowing through the CAISO-operated transmission grid from generators to end-use electricity consumers. It seems to me locational marginal pricing (LMP) has the potential of enabling CAISO to manage transmission system congestion in a much more cost-effective way than the present zonal pricing scheme.

I am not an expert in information systems technology. Therefore, I generally rely on the judgments of others, who are very well qualified, regarding the progress of the MRTU project. CAISO staff has substantial expertise in-house in information systems technology; CAISO has appropriately augmented its expertise with some of the very best consultants in the field; and CAISO has, wisely, outsourced management of this complicated, multi-year, expensive project to a firm that is well regarded in the field. The CAISO Board is fortunate to include expertise in decision analysis and simulation modeling.

What steps do you support to protect businesses and consumers from higher electricity/transmission costs should the CAISO proceed with the MRTU?

The outcome of successful MRTU completion would be more effective and efficient transmission grid operations, not higher costs for end-use electricity consumers. Of course, there is a significant completion risk in every major project to renovate and improve a complex information system. But I believe a much higher risk would be to continue to rely on CAISO legacy systems without successful implementation of most, if not all, of the improvements contemplated in MRTU.

3B. What is the status of the MRTU?

The MRTU project is currently in mid-stream. Of a total project budget of \$139 million, about \$34 million was spent as of March 31, 2005.

Has the CAISO governing board set a deadline for MRTU implementation, and will it meet that deadline?

Yes, the approved MRTU project schedule calls for implementation in February 2007. I have no information that would lead me to conclude that the MRTU project will not be completed on schedule. The project continues on its current schedule and within the board approved budget, and CAISO's Board, CEO and staff are committed to project completion on schedule and within budget.

How much are transmission customers paying for the CAISO to perform and implement the MRTU?

As indicated above, \$54 million has been spent so far with \$85 million to go to completion. The MRTU project has been substantially financed by a \$124 million 5-year bond issue in December 2004. Funding for MRTU was provided through CAISO's FERC approved grid management charge (GMC) during 2002-04. As a result of the bond issue, MRTU's cost impact on CAISO's GMC will be spread over 2005-09. The annual debt service costs for the 2004 bond issue included within CAISO's GMC for 2005 will be about \$24.5 million.

4. Do you agree with the CAISO staff assessment for Summer 2005?

I believe CAISO's assessment of California electricity demands and power supplies during summer 2005 is reasonable, based on information and analysis currently available. I understand the CPUC, CEC and CAISO are roughly "on the same sheet of music" regarding summer 2005. Power supplies are expected to be adequate to meet demands, assuming normal weather patterns prevail. If hot weather occurs, supplies could become very tight, especially in southern California. Substantial uncertainties underlie every forecast of energy demands and supplies. I always encourage exploration of alternative scenarios, rather than focusing on a particular forecast or single assessment of the future. Throughout the summer months of expected peak demands for electricity, CAISO will be forecasting on weekly, daily and hourly as a prelude for real-time management of the transmission grid.

To the extent you agree with the assessment, and demand exceeds supply this summer, do you see the CAISO's role as facilitating action by the energy markets to solve this problem, or stepping into the breach itself, similar to the purchasing role it played in 2000-2001?

If electricity demand exceeds supply during summer 2005, CAISO, independent power producers, energy service providers, utilities and electricity consumers will have a number of options. CAISO will play an instrumental role as coordinator and balancer in real time for the last increment (about 5 percent which is critical to serve CAISO's control area). On the supply side, if emergency actions are necessary, options include arranging additional short term purchases from generators outside CAISO's control area and requests for generation from any generators within CAISO's control area which are under the FERC's approved "must offer" obligation. Very importantly, demand side options include utility administered programs which may reduce load as much as 1,610 MW, and CAISO's voluntary load reduction program, which may accompany a stage one emergency declaration, resulting in substantial further load reductions. CAISO remains provider of last resort when/if electric energy shortages arise in the real-time market within CAISO's power control area.

5A. What steps do you support to ensure that environmental and public health impacts associated with the management of the power grid are taken into account in CAISO management of the grid?

California is a recognized leader in the development of renewable energy resources. We are fortunate to have on line major hydro and geothermal resources, over 2000 MW of wind generation capacity, biomass fueled plants and significant solar thermal as well as photovoltaics generation. CAISO is working with utilities, state agencies, and renewable energy resources owners to reduce or eliminate barriers to delivery of environmentally friendly or sustainable power to end-use electricity consumers in California. This includes CAISO finding ways to forecast production from intermittent renewable resources in advance so power can be scheduled in the market ahead of fossil-fueled power generation in CAISO's merit order dispatch. I support CAISO continuing efforts to integrate renewable energy resources successfully into both the forward market for wholesale power and real-time operations the transmission grid.

Transmission bottlenecks may cause the extended use of older, less efficient, more polluting power generation facilities. Some of the older power plants in urban areas are problematic. I support accelerated development and construction of transmission projects which enable shutting down these old plants. Furthermore, transmission projects can enable access to the grid and wholesale power markets for a variety of new renewable energy projects, especially wind farms, solar parabolic trough and solar thermal projects which are likely to be located in areas remote from electric load. I support construction of those projects which do not unduly burden utility customers with higher costs. Although not required to do so, CAISO's board adopted an environmental justice policy in December 2004. Having reviewed this policy, I support its continued implementation.

5B. Has the CAISO taken any actions to encourage so-called "environmental dispatch" of power plants to ensure the cleanest and least polluting plants are run before dirtier plants are brought on line?

Apart from electric generating plants owned by utilities or under long-term power sales agreements with utilities, which are included in specific schedules submitted to CAISO by the utilities' subscribing coordinators, CAISO dispatches available electric generating plants using a merit order based on short-term economics, not environmental emissions. A new, efficient power generating facility generally has a lower heat rate (i.e., Btu/kwh) than an old, inefficient plant. Moreover, a new plant will incorporate best available emissions control equipment. Therefore, newer plant is more likely to be dispatched first by CAISO's economic dispatch system, assuming transmission congestion is not an overriding consideration. It would be interesting to know whether CAISO may achieve, indirectly, a rough approximation of "environmental dispatch" in this way. In any event, all plants CAISO dispatches are intended to be in compliance with environmental laws and regulations.

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Edward G. Cazalet, Ph.D.
26340 Alexander Place
Los Altos Hills, CA 94022

May 25th 2005

Mr. Don Perata
Chairman, Senate Rules Committee
California Legislature
State Capitol, Room 420
Sacramento CA 95814-4900

Dear Mr. Perata:

I am pleased to have this opportunity to respond to your letter of May 6, 2005 regarding my confirmation as a member of the California Independent System Operator (CAISO) Board.

First, I would like to answer the Committee's written questions followed by a summary of some of my goals during my service as a CAISO governor.

1. Role of the CAISO and Its Governing Board

What do you believe to be the core mission of the CAISO: ensuring grid reliability or overseeing and facilitating electricity markets? When the two are in conflict, which mission should take precedence?

Ensuring grid reliability is the core mission of the CAISO. Facilitating markets is always a supporting goal. The CAISO should operate markets only as necessary and cost effective and only within regulatory frameworks and competitive conditions that permit fair and efficient transactions. Properly designed markets will not conflict with reliability and poorly designed markets can contribute to unreliability.

Adequate transmission and generation resources are essential for reliable operation of the power system. Without adequacy, the CAISO cannot reliably serve electricity customers because the CAISO cannot deliver electricity to customers if there is not enough generation and transmission. Acquisition of sufficient generation resources, which is deliverable to serve customer loads, is the responsibility of the load serving entities with oversight by the CEC and CPUC and support by the CAISO. Adequate transmission, which is cost-effective and environmentally sound, is the outcome of a regulatory process, which involves the participants, the CAISO, the WECC, the CEC, the CPUC and the FERC. I believe that the CAISO can facilitate generation and transmission adequacy through technical and policy support for effective forward energy markets in which load serving entities purchase wholesale generation and transmission rights to deliver energy to their loads.

The CAISO must enforce Western Electricity Coordinating Commission (WECC) operating reliability standards to assure that for each hour enough generation is scheduled by load serving entities to meet their loads and necessary operating reserves. If the available generation cannot satisfy the load and reserve requirement, the CAISO is required to take necessary steps to curtail load until the system is balanced. The CAISO must also respond effectively and efficiently to the minute-to-minute and second-to-second changes in electricity loads and be prepared to respond to contingencies such as the loss of generation or transmission facilities. Reliable operation of the transmission grid including scheduling and/or dispatch of available generation is an essential part of the reliability mission of the CAISO.

The CAISO's technical role in transmission planning and investment is critical because its transmission expertise is unique within California agencies. The CAISO also provides transmission rights to support forward energy markets. Longer-term transmission rights than the CAISO now offers could be helpful to investment in generation.

The CAISO should also support the implementation of retail real-time pricing and load response to real-time prices and curtailment signals to load. Real-time pricing can contribute to reliability, lower costs to retail consumers, and give consumers a choice of how much reliability they want to pay for.

The CAISO may operate certain daily, hourly and real-time spot markets, but such markets should only be used to manage residual transmission congestion, residual generation and load balancing, and real-time load management. As a long-term policy direction, the CAISO should aim to encourage participants to meet their load requirements and to discourage their reliance on procurement of energy in CAISO spot markets. As a policy objective, the procurement by participants in CAISO spot markets should be less than five percent of total load.

How would you describe the role of the CAISO Governing Board and the role of the staff? Who should set policies on grid management? Should the staff be allowed to make policy decisions without input from the board?

While most governing boards act primarily to review managerial decisions, the CAISO Governing Board has a broader responsibility for making policy decisions with perhaps the best example being the Board's approval process for the CAISO tariff. Only the Board should make policy decisions but it should draw on information provided by independent experts, stakeholders, state and federal policy makers and the CAISO staff. It is an enormous challenge for the Board to provide the necessary oversight and leadership on major policy and management decisions. The CAISO relies on highly complex systems, software, and operating and planning procedures. The CAISO Board must work closely with the staff to retain the greatest possible oversight over policy development.

Many stakeholders have strongly vested interests in the outcomes of the CAISO decisions and they are very effective in advocating their positions before the staff, the Board and

the Federal Energy Regulatory Commission (FERC). Many policies evolve over long periods of time with considerable staff and stakeholder involvement before they rise to the CAISO Board for decision. And many CAISO Board policy decisions are subject to review by FERC. Still, the CAISO Board has the responsibility to vigorously oversee this policy process and identify and make policy decisions. I believe that active Board involvement with the staff during the early stage of policy development will help the Board and staff cooperate to reach resolution of policy decisions more quickly.

The CAISO Board has recently recruited Yakout Mansour as CEO and President. Yakout brings strong leadership to the CAISO with his extensive power industry expertise and deep management skills. Yakout has stated that he understands that the Board is responsible for policy decisions and that he will rely on the Board for both strategic planning and ongoing policy decisions. Yakout has stated that he supports an open relationship between management and the Board. With support from the Board, Yakout has committed to control CAISO costs and to ensure effective management of CAISO operations.

2. Expenditures and Costs to Ratepayers of CAISO Operations

What is your view of the cost of the CAISO operations including staff salaries? Do you believe that CAISO staff and administrative costs are higher than most other RTO's? If so, what steps do you support to lower those costs? Specifically do you support the establishment of enforceable budget targets for the CAISO?

In order to be viable, the CAISO must be the cost effective provider of grid management services both in California and the West. To achieve this objective, the CAISO must substantially reduce its costs over the next few years. Simplifying and automating the operation of the CAISO and concentrating most of the effort on those functions necessary to its core mission of reliable operation of the grid would achieve this goal. Eliminating non-core services or charging separately to recover the full costs of optional services would also help. Once the proper focus, simplification, and automation are achieved, outside contracting, staff, system and overhead costs can be reduced.

I believe that all of the nation's RTOs are overly complex and therefore overly costly, which implies that a cost comparison between the CAISO and other RTOs is not very helpful. However, it is important to recognize that the CAISO is currently at the upper end of such a cost comparison. Unfortunately, there is a tendency for an RTO to address an issue by increasing its intervention in the market, which usually implies increased complexity in RTO rules and higher costs. As stated above, I believe that participants should assume increased responsibility to meet load, which implies that the CAISO can reduce its intervention and the complexity of its operations.

The new Board Human Resources Committee and the Board will carefully review staff compensation. I advocate comparing staff and executive compensation to that paid in municipal utilities as well as compensation paid public utilities and other RTOs.

The CAISO has a budget process that involves the staff, stakeholders and the Board. As a member of the Board Finance Committee I will push to control and then reduce CAISO costs through simplifying, streamlining and automating operations. The upcoming 2006 budget process allows me the first real opportunity to review CAISO costs. Budget targets will be set and enforced.

3. Market Redesign and Technology Upgrade

Do you support the CAISO staff proposals to implement the MRTU, including LMP? What steps do you support to protect businesses and consumers from higher electricity/transmission costs should the CAISO proceed with the MRTU?

I support the MRTU project. MRTU aims to address many problems inherent in today's CAISO systems. The project is highly complex with significant implementation risks and needs to be overseen and managed carefully by the CAISO Management and Board to provide benefits to the electricity consumers of California. As Chairman of the Board Operations committee, I directly oversee the MRTU project on the behalf of the Board. I support effective implementation of MRTU but want to note that I was not on the Board when the major policy decisions on MRTU were made.

The MRTU project has many components. One component will upgrade and automate the CAISO settlement and billing systems. It should reduce the manpower required to carry out these functions and thereby save costs. It will also facilitate a substantial reduction in the elapsed time to bill and settle CAISO transactions. This will reduce the amount and cost of credit that entities must post or assume and will allow earlier payment to sellers by buyers ultimately reducing costs to consumers.

Other components of MRTU will replace aging and poorly designed software systems used for scheduling and bidding and for data archival and reporting. Such system replacements are necessary to reduce costs and improve service and reliability.

The proposed MRTU dispatch systems will use very sophisticated transmission network models and optimization techniques that support day-ahead and real time commitment and dispatch of generation to meet time varying load, contingencies, and transmission constraints. These systems are designed to reduce some of the problems the CAISO has had for the last several years in managing grid congestion, but they also are a source of project risk and cost. The complexity of these systems is such that market participants may not be able to understand how prices and dispatch decisions are determined and therefore may not have confidence in these systems. Steps to reduce complexity may be necessary and it may take some time before these systems mature.

It is important to note that LMP applies only to those transactions carried out by the CAISO dispatch and does not apply to transactions outside of CAISO markets. A load serving entity can avoid most of the LMP costs impacts by procuring adequate deliverable energy in outside forward markets and receiving allocations of transmission rights from its generation sources to its load.

Several municipal utilities and certain customers question the wisdom of proceeding with LMP. The CAISO Board and staff need to take these concerns seriously and consider specific proposals to mitigate or compensate for adverse impacts of LMP on participants while preserving its operational benefits.

The CAISO must also be vigilant in the mitigation of market power in its spot markets. The MRTU will have many tools available for the mitigation of market power including price caps and various forms of local market power mitigation. However, such tools must be used carefully to avoid incentives for load serving entities to over rely on the spot market and to avoid disincentives for investment in generation. It is important to recognize that the FERC has primary responsibility for market power oversight in wholesale markets and the CPUC in retail markets. Market power is best managed or eliminated in the CPUC and FERC oversight of procurement and investment decisions outside and forward of CAISO markets. If this is not done, then the CAISO will have a more difficult task to mitigate market power within MRTU.

What is the status of the MRTU? Has the CAISO governing board set a deadline for MRTU implementation, and will it meet that deadline? How much are transmission customers paying for the CAISO to perform and implement the MRTU?

The design and implementation of the MRTU has been underway for several years. Most MRTU software procurements have been contracted and are in various stages of final development and testing. Most development and testing should be completed late this year. The target date (Board deadline) for implementation of MRTU is February 2007 with participant testing to begin at least one year ahead of implementation. This schedule allows for continued testing and training and development of participant interfaces to the MRTU by market participants during 2006.

Shortly after joining the Board last October I conducted my own review of the MRTU project, and that review continues today. I have concluded that it is best to finish the development and the testing of the MRTU software as currently designed, because any changes at this point will greatly increase development costs and delay testing and integration. However, should testing and further review identify design problems it will be necessary that various components of MRTU be simplified, phased-in, or not used at all. In any case, I am confident that the Board will not approve implementation of MRTU until testing is complete, the design is verified, participants are ready, and we believe that implementation will benefit electricity customers. I am currently hopeful that development and testing is proceeding on schedule, but many risks remain and there is a high level of stress on staff and market participants to meet the February 2007 deadline.

The Board, prior to my arrival, concluded an extensive review of MRTU and installed strict financial tracking, reporting and project management. Information on progress is reported directly to the Board Operations Committee and the Board must approve significant schedule, scope and budget decisions.

The capital cost of MRTU is about \$128 million. About \$50 million of this funding has been collected from CAISO rates in 2002-2004. A 2004 CAISO bond issue provides the balance of capital funding. The payments on these bonds will be made over five years, with funds from CAISO's Grid Management Charge. The bonds are tax-exempt with a interest rate of about 3%. The non-capital costs of implementing and operating MRTU will be budgeted in CAISO's Operating & Maintenance Budget.

4. Summer 2005 Energy Supply Concerns

Do you agree with the CAISO staff assessment for Summer 2005? To the extent you agree with the assessment, and demand exceeds supply this summer, do you see the CAISO's role as facilitating action by the energy markets to solve this problem, or stepping into the breach itself, similar to the purchasing role it played in 2000-2001?

I have followed in some detail the development of the CAISO staff assessment for Summer 2004 that was carried out in close cooperation with the CPUC and CEC. There are many uncertainties that this assessment had to consider including load growth, generation and transmission outages, hydro conditions in California and the Northwest, generation additions and retirements, transmission enhancements, import limitations, and market conditions in the rest of the West. Considering the challenge, I believe the CAISO staff assessment has struck a proper balance of risk and conservatism.

Depending on weather conditions and many other factors it is possible that demand could exceed supply in Southern California. To prepare for such conditions, the CAISO operations staff has undertaken extensive training and preparation to mitigate the impact on California as much as possible. The CAISO will do everything possible including public appeals for voluntary load reductions before blackouts are implemented.

The CAISO has the authority to make short-term purchases (out of market) when insufficient energy has been offered into its markets during heat storms or other contingencies and will do so if absolutely necessary. The situation has changed greatly since 2000-2001 when load-serving entities were overly dependent on the spot market because of CPUC policy preventing forward contracting. Now, most load serving entities are more resource adequate with forward physical or financial contracts to hedge price risks of the spot market. Necessary load serving entity purchases this summer should be authorized by the CPUC. As always, the CAISO will have to be vigilant in its oversight of potential market manipulation and market design flaws.

At this point there are a limited number of actions that can be undertaken for the summer of 2005, and so our focus needs to be on 2006 and beyond. The CPUC has been working on resource adequacy standards, but procurement of deliverable resources needs to be assured as soon as possible. Impediments to these procurements need to be resolved by the CPUC and the CEC. Accountably for adequate supply must be clearer.

5. Protection of Public Health and the Environment

What steps do you support to ensure that the environment and public health impacts associated with the management of the power grid are taken into account in the CAISO management of the grid?

The CAISO must comply with all environmental and public health laws and regulations. Policies that support renewable resources such as wind will be supported with approvals of necessary transmission infrastructure. Transmission projects approved by the CAISO must undergo public review and environmental assessment by the CEC and the CPUC.

As a Board member I voted for approval of the Environmental Justice Policy, which was adopted by the CAISO Board. I have also supported transmission projects that will eventually make possible the retirement of older, polluting power plants in San Francisco and bring more power into the Los Angeles basin, reducing pollution there as well.

Has the CAISO taken any actions to encourage the so-called “environmental dispatch” of power plants to ensure the cleanest and least polluting plants are run before dirtier plants are brought on line?

The CAISO has only partial control over the dispatch of power plants in its service territory. Currently most plants are dispatched by their owners and scheduled with the CAISO in their day-ahead schedules. Some plants are dispatched by the CAISO in the real-time balancing market and as ancillary services. Wind plants, for example, are not dispatched but generate when wind is available. Energy produced by such plants is given preference in the dispatch over other sources. The CASIO has developed new forecasting tools and market rules to support wind energy that are cited as examples for the rest of the nation.

Any plant can be scheduled to run by its owner, so those owners can carry out environmental dispatch voluntarily or as required. All thermal generating plants are subject to air quality permits and other environmental restrictions. The plant operators must operate their plants in such a way that they do not violate these environmental restrictions.

For those plants dispatched by the CAISO, to the extent more polluting plants are restricted by environmental laws to limited operation, dispatch will reflect these environmental limits. To the extent that the cost of emission credits are included in bid costs of a plant to the CAISO, such plants will be less likely to be dispatched. To the extent the value of renewable energy credits and other subsidies reduce the bid price of plants they are more likely to be dispatched by the CAISO or their owners.

6. Goals for My Service as a CAISO Governor

It would be my honor to be confirmed by the Senate as a Governor of the CAISO. My overarching goal is to guide the CAISO in serving California consumers and its economy.

The CAISO is principally responsible for the transmission grid and its use for the efficient and reliable delivery of wholesale electric power from generators to load serving entities that directly serve California consumers of electricity. My focus will be on the people, processes, systems and rules that support reliable delivery of power, efficient and fair operation of the California markets, open access to the transmission system, the investment in adequate transmission infrastructure for California, and reducing the costs of the CAISO.

The California economy, the health, safety and well being of millions of Californians are impacted by CAISO decisions and policies and I take seriously my responsibility. I have committed myself to studying every decision brought to the Board. As well, I look forward to identifying decisions that the Board may need to initiate. In doing this I not only rely on materials presented to me by the staff, but I often ask for additional information and briefings.

I voluntarily attend many stakeholder meetings and read all of the stakeholder positions and CAISO white papers and other publications posted on the CAISO web site. I have met with a wide range of stakeholders to get their direct inputs. I have also been invited to speak in several public forums as a Board member. I try to keep up with changes and performance at other RTOs, trends, and legislation. I am committed to open meetings and transparent decision making by the Board. This job is time consuming and challenging.

I have no ownership, business, or consulting relationships with any CAISO participants and I will be completely independent and objective in my Board role.

Early this year, I spent about two months full time at the CAISO as “transition manager” just prior to the arrival of our new CEO. This enabled me to learn first hand about the operations and people at the CAISO. This experience will be extremely helpful to the CAISO while I serve on the Board.

As Chairman of the Board Operations Committee I have immersed myself in both the policy and technical details of transmission planning, market and grid operations and the planning and development of the MRTU project. I have many years of experience in power market design and operation, and the software and hardware systems they use. I have asked detailed questions and made many suggestions.

I have a special interest in transmission planning at the CAISO, which is overseen by the Operations Committee as well. Adequate transmission is essential to both reliability and a well functioning power market. However, transmission planning is difficult because of the complexity of the transmission grid, the tradeoffs between generation location and transmission, the high cost and long-life of transmission, and the opposition of some communities to new transmission. I have decades of experience in transmission modeling and analysis that I can draw upon to support and oversee the excellent CAISO transmission planning team.

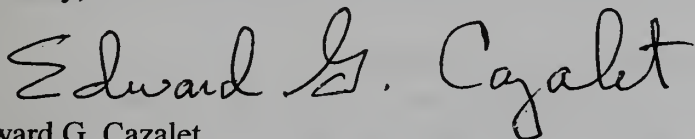
The CAISO cannot be operated or planned without understanding our relationships with the rest of the West and with the California municipal utilities that operate separate control areas within California. We must continue to depend on imports for a significant fraction of our power and stand ready to export when other areas in the West need power from California.

The CAISO's relationship with some of the municipal utilities is strained. Both have valid concerns that the Board, the CAISO staff, and the municipal utilities in California need to address for the benefit of all Californians.

Reducing the CAISO costs will be a priority for me as a member of the Finance committee. Reducing costs is a matter of vision as to how the mission of the CAISO can be carried out better at lower cost rather than slashing costs.

Thank you for this opportunity to respond your questions and convey my goals for my service as a board member. I look forward to the confirmation process.

Sincerely,

A handwritten signature in black ink that reads "Edward G. Cazalet". The signature is written in a cursive, flowing style.

Edward G. Cazalet

ANTHONY W. BATTS
POST Commissioner
Goals

It is my pleasure to serve as a POST Commissioner. I hope to accomplish the following goals during my appointment as Commissioner to this important organization.

- Raise standards of law enforcement officers by assessing training procedures, improving in-service training and providing additional training opportunities.
- Solicit the contribution and input of police officers on safety standards and their expectations regarding issues on personal protection.
- Ensure officers are performing the imperatives that citizens expect by investigating community involvement in the decision-making process and exploring opportunities for establishing a better means of communication with the public, especially the elderly and poor who normally do not have a voice.

AUG 12 2005

THE UNIVERSITY OF CHICAGO

DIVISION OF THE PHYSICAL SCIENCES

1962-1963

The following is a list of the members of the Division of the Physical Sciences for the year 1962-1963. The members are listed in alphabetical order of their last names. The names are followed by their titles and the departments to which they belong. The names are followed by their titles and the departments to which they belong.

The following is a list of the members of the Division of the Physical Sciences for the year 1962-1963. The members are listed in alphabetical order of their last names. The names are followed by their titles and the departments to which they belong. The names are followed by their titles and the departments to which they belong.

The following is a list of the members of the Division of the Physical Sciences for the year 1962-1963. The members are listed in alphabetical order of their last names. The names are followed by their titles and the departments to which they belong. The names are followed by their titles and the departments to which they belong.

The following is a list of the members of the Division of the Physical Sciences for the year 1962-1963. The members are listed in alphabetical order of their last names. The names are followed by their titles and the departments to which they belong. The names are followed by their titles and the departments to which they belong.

Collene (Thompson) Campbell
27552 Rolling Wood Lane
San Juan Capistrano, California 92675
(949) 496-4647 (949) 496-5100 Fax (949) 248-1619
collenecampbell@cox.net

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AUG 2 2005

July 28, 2005

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900
FAX (916) 445-0596

Reference: Collene Thompson Campbell
Confirmation Hearing, August 24, 2005
Commission on Peace Officer Standards and Training

Dear Senator Perata and Senate Rules Committee:

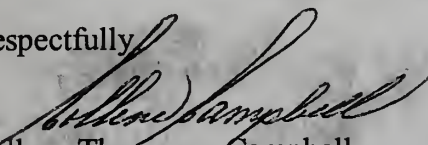
Thank you for your interest, concern and your request regarding my primary goals and objectives as a Commissioner on POST, where I am now serving as Chair. I take this responsibility very seriously. More than most, I deeply understand the astronomical cost of crime, both emotionally and economically. Plus, I strongly recognize the necessity of proper training for all law enforcement officers.

Sadly, my education in the Justice System is not one to be envied. However, the tragic murders of my family has certainly supplied me with twenty-three years of continued, first-hand education regarding crime, law enforcement, case solving and the necessity for better understanding, communication and cooperation between victims and law enforcement.

My primary goal is to better train law enforcement and victims to work more effectively together in case solving, prosecution and crime fighting. Those who know me will verify that I'm extremely serious about public safety and my goals of improving the working relationship between law enforcement and victims. These goals are achievable with proper planning and education.

By working with the State and National Justice System, District Attorneys, Law Enforcement and the victims of violent crime, it has become very clear that more cases should and could be successfully solved and prosecuted, by utilizing improved communication skills between victims, law enforcement and prosecutors.

I am pleased and honored to be serving on the POST Commission and hopefully you will confirm that my dedication and commitment is appreciated by the State of California. My resume is attached.

Respectfully

Collene Thompson Campbell

AUG 2 2005

RIVERSIDE COUNTY

BOB DOYLE, SHERIFF

*Sheriff*

P.O. BOX 512 • RIVERSIDE, CALIFORNIA 92502 • (951) 955-2400 • FAX (951) 955-2428

August 8, 2005

Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento, CA 95814-4900

Dear Mr. Perata:

It is a pleasure to provide you with the following statement outlining my short and long term goals for the commission.

The Commission on Peace Officer Standards and Training must continue to be the leading organization to provide quality training to peace officers throughout California.

First, the training needs to reflect current conditions that are impacting our communities and law enforcement professionals.

Second, we must strive to elevate training standards, ensuring that our officers are the best that they can be.

Third, we must provide the highest quality training, and most realistic training that is possible.

Fourth, as the leading organization in law enforcement training, it is important that we listen to our law enforcement professionals and maximize the services that are needed by them. We must be comfortable with change and have the ability to adapt.

Finally, we must insure that we are in partnership with law enforcement agencies, constantly building coalitions and cooperative efforts. This will ensure that the citizens of California have the best trained law enforcement personnel available.

Sincerely,

A handwritten signature in black ink, appearing to read "Bob Doyle".

BOB DOYLE, SHERIFF-CORONER

BD:ns

AUG 8 2005

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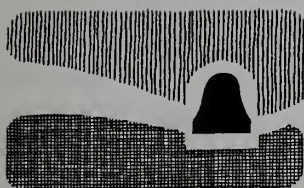
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city of san luis obispo

POLICE DEPARTMENT

1042 Walnut St., San Luis Obispo, CA 93401 • (805) 781-7317

July 26, 2005

Senator Don Perata, Chairman
Senate Rules Committee
State Capitol, Room 420
Sacramento CA 95814-4900

Dear Senator Perata:

I understand the Senate Rules Committee will be considering my confirmation as a member of the Commission for Peace Officer Standards and Training (POST) on August 24, 2005. I am pleased to have this opportunity to provide the Committee some brief information concerning my goals for the Commission during my term.

California law enforcement agencies are among the finest in the country, if not in the world, and the Commission on POST leads the way in making this possible. I truly believe that the key to maintaining the excellent quality of law enforcement in our state is ensuring stringent and appropriate hiring standards and providing meaningful, relevant training throughout an officer's career. The Commission on POST is the mechanism to accomplish this.

During my service on the POST Commission, I have several goals that are consistent with the Commission's mission and mandates:

- Recruitment and Hiring

Recruitment of qualified women and men into the law enforcement profession continues to be a challenge for many agencies in California. Being a peace officer is an extremely difficult and often thankless job and it takes a special person to recognize the incredible rewards lying just beneath the surface of the profession. Rather than relaxing our hiring standards to allow more people to qualify for positions, I believe we need to maintain and even strengthen our standards so that our law enforcement agencies are considered professional and desirable places of employment. This goal is included in POST's strategic plan.

- Relevant and Timely Training

The challenges facing law enforcement are many and varied, and they change rapidly in today's environment. From Internet crimes to terrorism, new threats and crimes demand quick adjustments in the way law enforcement agencies operate and in the training we

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Telecommunications Device for the Deaf (805) 781-7410

provide our employees. And now more than ever, the relationship between officers and members of our diverse communities is critical to maintaining public trust and safety. In order to meet these challenges, our public safety employees must receive quality training that is timely and relevant to their mission. As a POST Commissioner, I look forward to supporting and guiding these efforts, including leveraging specific funding sources (such as Federal Homeland Security funds) for peace officer training, where appropriate.

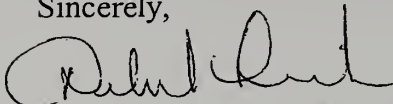
- Emphasis on Leadership and Ethics

Peace Officers have a tremendous amount of legal authority that brings with it the responsibility to act with empathy, wisdom, and leadership. Their decisions must be grounded in strong ethics that are not influenced by emotion or personal gain. Ethical conduct and leadership must be infused in the training we provide law enforcement personnel regardless of topic. I believe leadership is a learned skill that can be taught throughout an officer's career, beginning with their basic academy training. POST is completing modifications to the basic training course in order to accomplish this goal, an effort I support. I am interested in ensuring leadership training is further developed at all levels of law enforcement.

I am deeply honored to have been nominated to serve on the Commission on Peace Officer Standards and Training and I intend to be diligent and thoughtful in my service. I look forward to this opportunity to contribute to my chosen profession in this meaningful way.

Thank you for your consideration.

Sincerely,



Deborah Linden, Chief of Police
City of San Luis Obispo

(805) 781-7337
dlinden@slocity.org

July 28, 2005

Nelson C. Lum
194 Prague Street
San Francisco, CA. 94112

Senator Don Perata
Chairman
Senate Rules Committee
State of California

Dear Honorable Senator Perata and Members of the Senate Rules Committee:

I am honored and grateful for you to have taken up your precious time to consider my Confirmation as Commissioner to the Commission on Peace Officer Standards and Training. Having been involved in the field of Law Enforcement for the past thirty plus years and having developed and taught many law enforcement related subjects, I am keenly aware of the needs for peace officers to achieve standards and participate in training.

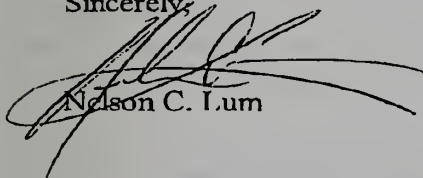
As a Commissioner, my short-term goal is to assist with the urgent needs to develop the necessary Weapons of Mass Destruction Training mandated by both the Federal and State Government.

My long-term goals are to establish a better system to track instructor development and methods of compensation for instructors. Currently, there is too much so call train the trainer courses that are too redundant. Both money and time are being wasted for unnecessary duplications. A more uniformed system needs to be developed to set paradigms for instructors to attain. These instructors can then be compensated according to their level of academic attainment as establish by POST. This process will streamline the instructional system and expedite the delivery of updated trainings to the officers in our state.

If you have any questions regarding the issues above or any other matter that I can be assistance with, please don't hesitate to contact me.

Thank you for your time.

Sincerely,



Nelson C. Lum

JUL 29 2005

July 15, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
c/o Nettie Sabelhaus, Rules Committee Appointments Director
Room 420
State Capitol
Sacramento, CA 95814
Fax: (916) 445-0596

Dear Senator Perata,

In response to your kind letter of June 16, 2005, I wish to submit the following response to your request for statements regarding my short and long term goals for the Central Coast Regional Water Quality Control Board. The following answers correspond by numbers to the questions that have been asked:

Statement of Goals

1. My greatest desire, which is both a short and a long term goal for the Central Coast, is to develop and adopt enforceable implementation policies to complete permanent water quality improvements for our region. This sustainable program would use as its most important element the expansion of open space and agricultural conservation easements in critical areas for water quality protection. Further, coordination between granting agencies, like the Department of Conservation and the Wildlife Conservation Board, and our regional board to achieve the permanent protection and preservation of strategic riparian areas, wetlands, range and grazing lands, and resource conservation areas will greatly enhance our storm water programs. Local non-profit organizations with which we have had great success in these areas are the Elkhorn Slough Foundation and the Monterey County Agricultural and Historic Lands Conservancy. Additionally cooperation and coordination between our Board, other state agencies, and local non-profit organizations are becoming recognized as necessary ingredients to effect the institutionalization of low impact development and the reduction of indirect and waste discharges of petroleum based contaminants and plastics into our fresh water and seawater resources.

It is clear that complete success in the pursuit of these goals may not be easily achieved. Although our region has done a reasonably good job in controlling point and non-point pollution, aging municipal sewer systems and periodic failures of city councils and boards of supervisors to establish and adequately fund replacement accounts clearly demonstrate the need for vigilance in protecting our water resources.

Further, it is imperative that we sustain and fund the Total Maximum Daily Load (TMDL) program to effectively deal with non-point source pollution. This program must be coupled, however, with sustained, long term funding alternatives to guarantee on going TMDL development and implementation.

Finally, in as much as my short and long term goals reflect problems of varying magnitude and urgency, the following is a bullet point list of my priorities. Given my past experience and my sincere commitment to the protection, preservation and enhancement of our state's water resources, I would be happy to discuss in detail these issues and how they impact Central California at any time.

SHORT TERM AND LONG TERM GOALS

Short Term Goals

- Gasoline leak site cleanups (MTBE)
- Oil production legacy cleanups / perchlorate clean-up
- Near term TMDL development and implementation tasks
- Efficient regulation of low threat discharges – waiver policy review
- Storm water – continue Phase I and II work
- Municipal system compliance, including collection systems
- Power plant permitting
- Environmental problem solving approach pilot projects – greenhouses and agriculture runoff
- Dry cleaner and other solvent site cleanups
- Landfills – continued modernization to lined cells, with continued leachate controls

Long Term Goals

- TMDL development and implementation tasks / conservation easement programs
- Storm water – continue Phase I and II work
- Gasoline leak site cleanup
- Oil production legacy cleanup
- Municipal system compliance, including collection systems
- Power plant mitigation implementation
- Landfills – continued modernization to lined cells, with continued leachate controls
- Dry cleaners and other solvent site cleanups
- Expanded use of environmental problem solving approach as warranted by pilot projects

State/Regional Board Roles

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?

During my past tenure, I have developed a great body of knowledge and institutional memory which are the greatest qualifications that I bring to this position. I have gained this information base by systematic monthly meetings or phone conferences with Roger Briggs, our Executive Officer. The most complex issues often necessitate weekly detailed discussions with our staff, and I have never hesitated to avail myself of every opportunity to learn about these regionally

significant issues. Additionally, state board staff, particularly the Office of the Chief Counsel, often provides me with invaluable information, guidance, and advice. I rarely have contact with State Board members.

3. Do you have any suggestions on how they might better assist you?

Having a State Board member that has an intimate knowledge of Central California water quality issues might elevate the priority given to our regional water quality issues and the inter-relationship between our Regional Board and the State Board.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board? I have received significant training on conflict of interest issues as a school board member, a city council member, a mayor and as a harbor commissioner. I have been briefed on three occasions by state board attorneys on conflict of interest issues, and I have received and completed intensive mandatory ethics training from State and Regional Board staff. I have knowledge of both the Bagley-Keene Act and the Brown Act.

In the twelve years that I have served on the Regional Board, I have recused myself only once. I currently serve as the Chairman of the Moss Landing Harbor Board of Commissioners. When our board was distributing funds that we had collected from fines levied against PG&E, the Board evaluated several grant applications from non-profit environmental groups with whom I had worked with in the past. I recused myself to avoid any potential appearance of a conflict, even though I had none.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?

The State Board and our board could have a much closer working relationship. Greater knowledge of our region could improve this. When Region 3 decisions are appealed to the State Board, the State Board sometimes supports Region 3 decisions. The WQCC meetings provide opportunities for coordination and feedback among Board members, and the monthly Management Coordinating Meetings helps coordinate the statewide management team.

6. Are there specific areas of operation that you think would benefit from increased efficiency? Do you have any recommendations for improving efficiency in these or other operations at the regional boards?

The State Board is leading an effort to make significant improvements in grant processing and coordination with the regions on grant management. Although this effort is well worth the time, it should be noted that often parties that have complained after the fact about the regional board processes are the ones that have not been successful in receiving grants in a competitive environment.

7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

The State Board allocates the regions' budgets to each region, and those budgets are very compartmentalized (specific funding only for specific tasks), so the Regional Board has very little flexibility in the budget process and in our use of the budget. A greater public review of State Board funding priorities will demonstrate the disparity between mandated Regional programs and current funding levels.

8. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?*

We do the best that we can to protect our water quality with the funds that are allocated to our region. We always try to stretch the enforcement dollars that are given to us.

Water Quality Permitting

9. *Discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses.*

Storm Water permits could contain numeric limits. The most common question we get from permit holders now is, "I know I can only discharge clean storm water, how clean is clean?" Numeric limits could help level the playing field and require every permit holder to meet the same standard to protect water quality.

I disagree with the statement that "BMPs do not adequately protect water quality." The problem with our current NPDES storm water permits is that there is no incentive for the discharger to implement great BMPs rather than acceptable BMPs (great BMPs are a suite of BMPs that do the best job possible to protect water quality. Adequate BMPs are a suite of BMPs that may just barely protect water quality- BMPs that comply at the minimum level.). Since there are currently no numeric effluent limitations, but rather a requirement for the implementation of BMPs, the discharger must take the initiative (as required by the permit, but seldom done properly) to determine whether or not the sampling results meet the benchmark parameters for the sampled constituents and adjust or amend the suite of BMPs accordingly.

A solution to this problem might be to continue to require sampling but have numeric effluent limitations with a requirement that if it is exceeded, additional BMPs must be implemented. If the discharger fails to proceed adequately with additional BMPs, we would use one of our enforcement tools (Migden style penalties should not be used – see below). This will create additional incentive for the discharger to amend and maintain BMPs that are truly protective of water quality.

However, issues to be considered in using numeric limitations:

1. **Migden Mandatory Minimum Penalties (MMPs):** We have over 1,000 permit holders in our region alone. If we implement numeric limits in an NPDES permit, they will be subject to Migden MMPs, unless there is a legislative revision. For storm water discharges, with huge episodic swings in quality and quantity, it would make more sense for the regional boards to be able to use its judgment to use the most appropriate enforcement tool, rather than having mandatory minimum penalties. The Regional Board could probably not convene for enough hours to deal with mandatory minimums for storm water. As it is, we typically have two-day meetings to take care of existing Board

business. The Executive Officer should have the authority to issue and finalize smaller penalty complaints and orders.

2. Flow: The difficult part of storm water sampling is measuring flow. If the volume is large, it dilutes a small amount of pollutant to non-detect. If the volume of runoff is small, that same amount of pollutant can be over benchmark values. Couple that issue with the huge fluctuations in flow and we have a high degree of difficulty in using meaningful numeric limits.

10. *Explain your views on whether storm water permits should include numeric limits.*

The appropriateness of having storm water permits include numeric limits is a function of whether, given the unique circumstances of the individual permit, the inclusion of those numeric limits provides a greater incentive for the holder of the permit to meet or exceed storm water quality discharge standards. If they can improve compliance, I support their inclusion.

Enforcement of Water Quality Laws

11. *Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

We regularly coordinate with other law enforcement agencies where appropriate, such as with District Attorneys and the U.S. Attorney. Our Counsel and Executive Officer keep us apprised of these efforts. Our board has collected \$14.2 million in fines from PG&E's Diablo Canyon violations, and \$15 million in fines from Unocal for its spills at Guadalupe during my tenure. I supported both actions.

Water Quality Monitoring

12. *Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?*

We cannot adequately address water quality monitoring needs within current funding levels. The first and most important need we have for the Central Coast Ambient Monitoring Program is to increase staffing resources. Right now, only 0.8 PY are provided to our Region for monitoring activities. Because we believe the monitoring activities in our Region to be useful to all other programs, we have dedicated funds from other sources that have some flexibility to support an additional PY towards monitoring. We also currently support a full-time data manager through contract dollars associated with settlement funds. However, to improve the long-term success and stability of our monitoring program, we require at least one more full-time position dedicated towards monitoring. Additionally, if we had one full-time state position dedicated towards data management we could transition from tenuous contract staff support to a fully institutionalized data management program.

Though our Central Coast Ambient Monitoring Program has been successful at detecting new problems and documenting known problems, our budget has always limited the scope of the monitoring we can undertake. For example, we sample approximately 60 sites (some rotating on a five-year cycle, some fixed) on a monthly basis for conventional water quality. However, we have never had the budget to sample water for metals or other priority pollutants. We have staff in the field available to collect the information, we have the data management tools to utilize it,

but we do not have sufficient lab budget to conduct this type of work. We sample for toxicity and sediment chemistry at only a subset of our sites, again because of laboratory budget constraints. Adequate laboratory budget would increase the data we have available for decision-making, without significant additional field sampling time.

We conduct habitat assessment at all of our bioassessment sites, which gives us some sense of habitat quality at our monitoring sites. However, we have not had the staffing support to conduct comprehensive assessment of stream and riparian habitat. Given that sedimentation is one of the most common problems in our Region, our monitoring program would be much more "robust" if it addressed this problem. This task requires significant additional field time and a large new data management effort.

13. *How is your board complying with SB72 to standardize storm water monitoring?*

SB72 requires the State Board to develop, before January 1, 2003, minimum monitoring requirements for regulated municipalities that were subject to a storm water permit on or before December 31, 2001, and minimum standard monitoring requirements for regulated industries, as specified, and would require the requirements established in accordance with the bill's provisions to be included in all storm water permits on or before July 1, 2008. For the purposes of determining constituents to be sampled for, sampling intervals, and sampling frequencies, to be included in a municipal storm water permit monitoring program, the regional board shall consider the following information, as the regional board determines to be applicable:

- (A) Discharge characterization monitoring data.
- (B) Water quality data collected through the permit monitoring program.
- (C) Applicable water quality data collected, analyzed, and reported by federal, state, and local agencies, and other public and private entities.
- (D) Any applicable listing under Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313).
- (E) Applicable water quality objectives and criteria established in accordance with the regional board basin plans, statewide plans, and federal regulations.
- (F) Reports and studies regarding source contribution of pollutants in runoff not based on direct water quality measurements.

Although the State Board is still working on the revisions to the statewide industrial permit, and the municipal Phase II permit is scheduled for revision in a couple years, our regional board considers the above listed factors. We recently had a hearing on a group of Phase II municipalities and required them to detail their Plan more before bringing it back to us for reconsideration. With our recently updated Salinas municipal permit (our only Phase I permit); much of our Board discussion at the hearing was about the monitoring program, sources, and how to best coordinate with other monitoring programs such as monitoring we require through our regulation of irrigated agricultural runoff, and through our own Central Coast Ambient Monitoring Program (CCAMP). We are one of the few regions with our own regional monitoring program (perhaps the only region? SF Bay Regional Board's monitoring program is for the Bay, not the whole region). Also, as soon as the State Board provides statewide guidance per SB72, our Executive Officer can modify any monitoring program (unless it's to make it less stringent).

In the meantime, through CCAMP, we have prototyped a new approach for acquiring both management practice and monitoring data as part of agricultural regulatory program development. Monitoring program and storm water staff have been discussing how to adapt this approach for use by the storm water program. The approach includes web-based reporting of management practice strategies and water quality monitoring data in a geographic framework. We anticipate that adaptations of the existing software for the storm water program will be developed in more detail over the next six months, with implementation to begin in 2006.

Cleaning up Impaired Waters

14. *What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

Our staff does a fairly good job staying on schedule identifying impaired waters and developing pollutant loads that will lead to cleanup. In fact, we have one of the most comprehensive regional monitoring programs, which provide us with a basic body of data to rely on for identifying impaired waters. Additionally, we have dedicated monitoring staff that collects samples from our waters regularly so they are familiar with the conditions of our waters. We also have dedicated and highly qualified staff assigned to determine the appropriate pollutant loads; they manage and complete multiple projects every year.

These efforts could be improved by the following:

- Insist on improving our identification of opportunities and constraints to determining pollutant loads, and increasing staff's problem-solving to address constraints;
- Support staff recommendations to address constraints and improve development of loads (e.g., provide contract funding, expedite contract process, address problems with the Basin Plan);
- Based on understanding of opportunities and constraints, insist on oversight of staff efforts and performance evaluation of staff and Regional Board programs by Regional and State Board management;
- Continue to require vacancies in the Total Maximum Daily Load program to be filled as quickly as possible by prioritizing recruitment or by transferring staff from other programs into the vacancies as soon as possible;
- Improve staff recruitment capabilities by reviewing and modifying existing qualifications for environmental scientists and engineering geologists (which do not recognize degrees, such as geography, that often provide excellent watershed and landscape scale analytical skills);
- Increase legal resources to more effectively address the increased legal review and advice needed on the increased volume of technical determinations generated by technical staff and challenges made by stakeholders;
- Recognize need, improve methods and increase resources for outreach and education and for information management systems to notify and track responses from diverse and numerous newly affected parties (e.g., multiple private landowners discharging nonpoint source pollution);
- Increase resources for data collection, data management and data analysis, or in the event of using existing resources only, continue to look for smarter ways to gather and use information;

- Dedicate staff and resources to change outdated or inaccurate Basin Plan water quality standards that thwart efforts to establish appropriate thresholds for determining impairments and setting pollution loads;
- Increase grant funds for, or, regulatory authority to require, dischargers and other managers of water bodies (e.g., water districts) to collaboratively perform pollutant loading assessments on a watershed scale, such as source identification, quantification of existing loads, quantification of amount of load reductions; assignment of responsibility for meeting loads, and development of implementation plans to achieve the loads.

15. *What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

As far as implementing the pollution loads, I recommend the following steps:

- Elevate the priority of implementing established loads in other existing implementation activities and regulatory programs (e.g., Nonpoint Source Pollution Control, Waste Discharge Permitting, Storm water);
- Educate staff in other implementation and regulatory programs about the relationship between established pollution loads and implementation activities and oversight;
- Increase current Total Maximum Daily Load Development resources or encourage more use of current Total Maximum Daily Load development resources for implementation oversight and tracking;
- Recognize need, improve methods and increase resources for outreach and education and for information management systems to notify and track compliance from affected parties (e.g., multiple private landowners discharging nonpoint source pollution);
- Increase resources for numeric target and load reduction data collection, data management and data analysis;
- Provide grant funding to agencies and landowners required to implement load reduction activities;
- Other agencies should, wherever appropriate or possible, coordinate monitoring and assessment activities with our agency, provide technical assistance regarding load reduction strategies, coordinate and leverage their grant funds towards implementation of pollution loads, enforce their authorities if more effective than ours to insure pollution reduction (e.g., land use planning agencies should condition approval of urban development projects with water quality protecting conditions)- these agencies could enter into Management Agency Agreements or Memoranda of Understanding with our agency and/or be asked to report periodically on their efforts to support implementation of pollution loads.

Timber Harvest

16. *How would the new waiver change the level of monitoring that is now occurring?*

The Central Coast Water Board has required monitoring of Timber Harvest activities since the beginning of 2003. Since then, Water Board staff has refined the monitoring programs for the various levels of timber harvest activity. The new proposed waiver would not change the level of monitoring for timber harvest activities that is now occurring in the Central Coast Region (i.e., we are not adding new levels of monitoring). Rather, the new Waiver will ensure consistent

monitoring across timber harvest activities, such that activities with similar threat to water quality will be required to conduct similar levels of monitoring.

Monitoring will range from simple management practice implementation monitoring (visual field inspections) to water quality compliance monitoring (temperature and turbidity grab samples).

The Central Coast Water Board has sufficient staff to adequately review the data to determine compliance with conditions of the Order. However, there is additional data review and evaluation that should be conducted that may have to wait until more staff is available. Currently, Water Board staff are using students to conduct necessary background research on timber owner compliance history, water quality compliance monitoring (turbidity, temperature, etc.), and trend analysis. Additional staff would make it possible to follow up on the student research and more effectively 'ground-truth' our conclusions.

Prior to January 2003, timber harvest monitoring was limited to visual monitoring (pre-harvest and compliance inspections).

Since January 2003, the Central Coast Region has adopted approximately 29 waivers with varied monitoring requirements (implementation/effectiveness (visual), forensic (visual and water column sampling), and water quality compliance (water column sampling)).

The proposed new Waiver aims for:

Consistency and improve processing of waivers

Allow more time for pre/post harvest inspections, data evaluation, and refinement of monitoring efforts.

Focus inspections and monitoring on compliance

Increase protection of water quality and beneficial uses.

The proposed MRP for the Timber Harvest Requirements contains three levels of monitoring (Tiers I, II, III):

Tier I (CDF Forest Practice Rules compliance and Forensic monitoring) - Tier I would apply if proposed timber harvest operations would not pose significant threat to water quality.

Visual monitoring only

Tier II (Implementation/Effectiveness and Forensic Monitoring) - Tier II would apply if typical conditions of the proposed timber harvest operations include a low level of soil disturbance and a low drainage density index.

Visual monitoring

Water column sampling as needed

Tier III (Implementation/Effectiveness, Water Quality Compliance Monitoring, and Forensic) – Tier III would apply if typical conditions of the proposed timber harvest operations include a medium/high level of soil disturbance and a high drainage density index.

Visual monitoring

Water column sampling as needed to address

Water column sampling required

Perchlorate

17. What is the extent of perchlorate contamination in your board's region? How many wells do you estimate have been closed because of perchlorate contamination?

Perchlorate contamination has been confirmed at five locations in the Central Coast Region, including the former Olin Corporation/Standard Fusee flare manufacturing facility in Morgan Hill, the former Whittaker Ordnance facility near Hollister, the United Defense testing facility near Hollister, Teledyne McCormick-Selph testing and development facility, also near Hollister, and Vandenberg Air Force Base in Santa Barbara County. The only site with a significant off-site groundwater plume is the Olin site. The Olin plume extends approximately 10 miles downgradient, from Morgan Hill almost to Gilroy. Within the last 12 months, the Regional Water Board issued Olin Corporation and Standard Fusee two cleanup or abatement orders, one requiring plume characterization and a cleanup proposal, and the other requiring replacement water supply to well owners with perchlorate-impacted wells. Both orders require extensive perchlorate groundwater monitoring. The Whittaker Ordinance and Teledyne McCormick-Selph facilities have completed investigations and are extracting and treating perchlorate-impacted groundwater. The United Defense site was just recently identified and initial investigations are underway. Of the seven wells on the United Defense site, two have had perchlorate detections ranging from 15 micrograms per liter ($\mu\text{g/L}$) to 34 $\mu\text{g/L}$. Off-site impacts have not been identified with United Defense site activities. Groundwater remediation is underway at Vandenberg Air Force Base; however, there are no perchlorate-impacted drinking water wells. The Regional Water Board is continuing to aggressively search for additional perchlorate sites.

Approximately 1,200 private wells have been impacted in the Central Coast Region; nearly all of the impacted wells are downgradient from the Olin Site. None of the perchlorate-impacted wells have been ordered closed. In instances where the responsible party is known, Regional Water Board staff requires the responsible party to provide treatment or alternative water to the affected well owners. Olin Corporation is required to provide over 650 well owners with bottled water. Olin has installed four permanent ion-exchange treatment systems and will install treatment systems on private wells with perchlorate concentrations at and above six $\mu\text{g/L}$. Whittaker installed an ion-exchange treatment system on an adjacent, off-site agricultural well with perchlorate impacts.

18. What is your board doing to address this problem? What type of monitoring and treatment has your board ordered?

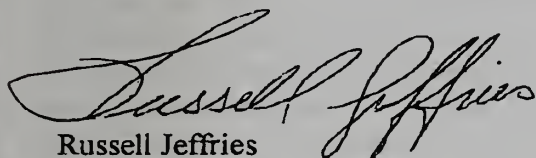
The Regional Board is aggressively pursuing investigation and cleanup at the above-mentioned sites. The McCormick Selph, Vandenberg and Whittaker sites are currently performing pilot scale testing of cleanup alternatives and will be submitting final cleanup plans later in 2005. The

United Defense sites are currently investigating the extent of contamination and will be proposing cleanup alternatives in 2006. The Olin site is already cleaning up perchlorate on site (both soil and groundwater) per our order, is cleaning up off site groundwater via the well head treatment mentioned above, and Olin is also responding to our order to provide additional off site groundwater cleanup. The Regional Board is very concerned about the perchlorate sites and has made them a priority for Regional Water Board staff. Staff provides updates at every Regional Board meeting to ensure that we are informed regarding site investigation and cleanup activities. When private wells are affected, we have required alternative water supplies for those well owners.

The Regional Water Board has issued Water Code Section 13267 and 13304 investigation and cleanup orders to the dischargers at these sites. The orders require the responsible parties to investigate and remediate the perchlorate pollution. Monitoring consists of installation of wells to facilitate regular monitoring for perchlorate. Where private wells are concerned, the Regional Water Board has ordered sampling to determine when alternative water must be provided. Lastly, we have ordered soil and groundwater treatment at all but one site (United Defense is still in the investigation phase). In Olin's case, soil treatment has lowered perchlorate concentrations from 7,000 ppb down to less than 20 ppb.

18. The Regional Board required Olin to provide interim uninterrupted drinking water to all well owners whose wells had perchlorate levels as low as 4 ppb. With the change in the Public Health Goal to 6 ppb, Olin will be providing water for those using wells above that concentration. We work closely with the Santa Clara Valley Water District, municipalities in southeastern Santa Clara County, dischargers and the public.

Sincerely,



Russell Jeffries
Regional Quality Control Board, Region 3

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June 16, 2005

Daniel Press Ph.D.
506 Hagar Court
Santa Cruz, CA 95064

Dear Dr. Press:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Central Coast Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

Timber Harvest – General Conditional Waiver of Waste Discharge Requirements

The regional water board will consider a general conditional waiver of waste discharge requirements for timber harvesting, and a monitoring and reporting program at its July 8, 2005, meeting. The monitoring and reporting program will have a three-tier structure that will require increased monitoring as the threat to water quality increases.

16. How would the new waiver change the level of monitoring that is now occurring? If adopted, does your board have sufficient staff to adequately review the monitoring data in a timely fashion?

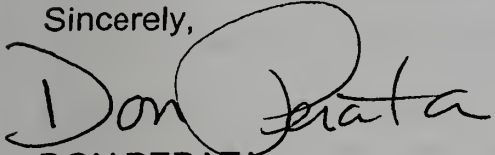
Perchlorate

At the March 25, 2005, board meeting, staff updated the board on the status of perchlorate contaminated sites. Olin Corporation and Standard Fusee have been ordered to supply replacement drinking water to persons whose wells have been contaminated with perchlorate. Active investigations are also continuing at McCormick Selph, Whittaker Ordinance Facility and United Defense.

17. What is the extent of perchlorate contamination in your board's region? How many wells do you estimate have been closed because of perchlorate contamination?
18. What is your board doing to address the problem? What type of monitoring and groundwater treatment has been ordered?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,


DON PERATA

DP:KW:dc

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DANIEL PRESS, PROFESSOR and CHAIR
ENVIRONMENTAL STUDIES DEPARTMENT
MEMBER, CENTRAL COAST REGIONAL WATER QUALITY CONTROL BOARD
UNIVERSITY OF CALIFORNIA, SANTA CRUZ
SANTA CRUZ, CALIFORNIA 95064

July 6, 2005

Senator Don Perata, Chair
California State Senate Rules Committee
Attn. Nettie Sabelhaus
State Capitol, Room 400
Sacramento, CA 95814

Dear Senator Perata,

Please find my replies to the questions you posed in your June 16 letter, regarding my confirmation as a member of the Central Coast Regional Water Quality Control Board.

Statement of Goals

1. I have been a member of the Central Coast Regional Water Quality Control Board since December of 2001. In that time, I have worked hard to advocate for the public's interest in clean water and water quality protection. As an Environmental Studies professor and policy analyst, I see my role as bringing an insistence on good science and data in the regulatory process. I strive to be fair, well-informed and open-minded. I think the record of the last three years would show that I have been an active member of the Board and very much a part of the Board's consensual decision-making process. More specifically, I would be very pleased if, in the remainder of this second term, the Central Coast Regional Board could 1) put in place fair, effective, accountable and protective means for reviewing timber harvest plans in our region, 2) resolve long-standing controversies over mitigations of environmental impacts from cooling water use by coastal power plants, 3) witness the completion or near-completion of a sewer system for the community of Los Osos and 4) develop a vision for the region that will provide long term guidance for the Board and staff to work toward water quality improvements that will be permanent (e.g., expanding the use of conservation easements in critical areas like riparian corridors for water quality protection, institutionalizing low-impact development, and enhancing our stormwater program to give some concerted attention to the problem of waste discharges of plastics into rivers and coastal waters).

State/Regional Board Roles

2. Regional Board hearings are indeed complex and time-consuming. Membership on the board does indeed consume as much time as a part-time position (e.g., the July 7-8 meeting agenda is over 1000 pages long), though it is certainly not remunerated like a part-time position. I get most of my assistance from the excellent staff of Region 3; they are very responsive to requests for clarification and feedback

prior to Board hearings, and on several occasions have dedicated whole meetings (e.g., the timber harvest workshop) or portions of hearings to educate board members or clarify issues from prior agenda items. Regional Board staff have also made excellent use of Technical Advisory Groups, whose reports often answer Board concerns and questions in great detail (e.g., see the advisory group reports on the Ag waiver and the Diablo Canyon power plant).

3. Region 3 staff are very responsive and I think they're doing an excellent job assisting Board members.

4. State and Regional Board attorneys briefed me on conflict of interest issues when I was first appointed to the Board and I also completed the mandatory ethics training online. I have not had a reason to recuse myself from voting on any issues yet -- no agenda items have yet involved any financial, personal or professional conflicts of interest regarding me, my family members or close professional associates. I do anticipate recusing myself from voting on UC Santa Cruz's storm water permit, since I'm employed by UCSC and also live on campus.

5. In my view, Region 3 enjoys a very good working relationship with the State Board. When Region 3 decisions are appealed to the State Board, the State Board almost always supports Region 3 decisions. Moreover, the current liaison to the Regional Board, Jerry Secundy, makes an impressive effort to attend our hearings and to update us on news from Sacramento. There is certainly room for improvement in coordination -- for example, Region 3 might have avoided a lot of controversy and time wasted on timber harvest plan waivers if the State Board had been in a position to provide more guidance on this issue. I don't think a new coordination process needs to be put in place; the WQCC meetings already provide opportunities for coordination and feedback among Board members, and the monthly Management Coordinating Meetings helps coordinate the statewide management team. The real problem is that the State and Regional Board workloads are so large relative to the size of their respective staffs.

6. While I appreciate the extensive updating and consultation regional staff provide to Board members, there may be opportunities for increased efficiency by eliminating some of the routine, low threat cases or agenda items from Board hearings. Some minor enforcement actions that the Board currently considers probably could also just be handled by the Executive Officer.

I am not familiar enough with the Board's grant and contract procedures to tell whether they are especially inefficient. I understand the State Board is leading an effort to make significant improvements in grants processing and coordination with the regions on grant management. I do appreciate the conundrum posed by the grantmaking process, namely that the Board wants to provide direction for the awarding of grants, but simply cannot review all grant proposals.

7. In my view, the Board's operations are remarkably transparent and open to public scrutiny. Board members receive updates from the Executive Officer about budget allocations in the Executive Officer's reports. These usually come at the end of long Board hearings and are sparsely, if at all, attended by the public; however, the opportunity is there to review the Board budget in quite some detail. One of the great challenges of public review comes from the sheer volume of the Board's workload. The staff are very conscientious about making the Board's business available to the public, but the public often cannot take the time to review the tremendous amount of documentation some agenda items receive. The State Board allocates the regions' budgets to each region, and those budgets are very compartmentalized.

(specific funding only for specific tasks), so the Regional Board has very little flexibility in the budget process and in our use of the budget.

8. I have thought all along that the Regional Board is not adequately funded to enforce state and federal laws. State and federal mandates keep growing, as do the number of permittees in the region. Moreover, the complexity of some of these issues also grows. Meanwhile, total budgeted FTE have not kept pace with growth in the Board's workload. For example, the Board could only allocate 0.6 FTE to the timber harvest review process, which is very inadequate and diminishes the Board's effectiveness in this issue area. However, we focus on doing the very best job we can with the resources we have, and we are constantly evaluating ways of being more effective in all of our responsibilities.

Water Quality Permitting

9. Water quality regulators today rely on BMP's especially for nonpoint source discharges. The attractiveness of BMP's is understandable. In situations where there are many dischargers, few regulatory staff and high monitoring costs, BMP's offer a good way to achieve compliance and self-reporting. The problem, of course, is that we don't know how well BMP's work for all the circumstances in which they're used. In principle, if the BMP's are correctly selected and applied, they can provide enormous water quality benefits.

Numeric effluent limits offer greater accountability (and perhaps better compliance rates), but only if they are adhered to and enforceable. In the case of nonpoint source discharges, however, use of numeric effluent limits essentially amounts to transforming nonpoint sources into point sources. For example, once a regulator develops TMDL's for a waterbody that is impaired from sediment discharges, each major class of discharger must be "allocated" its share of the sediment-reducing burden. Numeric limits could theoretically be developed for timber harvest operations, farms, quarries, private unpaved roads, grazing activities, but 1) the burden on staff to come up with defensible numeric limits for each discharger or discharger class would be enormous and 2) determining (through monitoring and/or self-reporting) who was responsible for specific sediment discharges in particular stream or river reaches would be nearly impossible. Using expensive, continuous monitoring equipment, it might be possible to detect discharge spikes and hot spots; thereby leading staff towards especially egregious problems, but again, the costs of detection would be quite high. Storm Water permits could contain numeric limits. The most common question we get from permit holders now is, "I know I can only discharge clean storm water, how clean is clean?" Numeric limits could help level the playing field and require every permit holder to meet the same standard to protect water quality.

I disagree with the statement that "BMPs do not adequately protect water quality." The problem with our current NPDES storm water permits is that there is no incentive for the discharger to implement great BMPs rather than acceptable BMPs (great BMPs are a suite of BMPs that do the best job possible to protect water quality. Adequate BMPs are a suite of BMPs that may just barely protect water quality—BMPs that comply at the minimum level.). Since there are currently no numeric effluent limitations, but rather a requirement for the implementation of BMPs, the discharger must take the initiative (as required by the permit, but seldom done properly) to determine whether the sampling results meet the benchmark parameters for the sampled constituents and adjust or amend the suite of BMPs accordingly.

A solution to this problem might be to continue to require sampling but have numeric effluent limitations with a requirement that, if exceeded, additional BMPs must be implemented. If the discharger fails to proceed adequately with additional BMPs, we would use one of our enforcement tools (Migden-style penalties should not be used – see below). This will create additional incentive for the discharger to amend and maintain BMPs that are truly protective of water quality.

However, issues to be considered in using numeric limitations:

1. Migden Mandatory Minimum Penalties (MMPs): We have over 1,000 permit holders in our regional alone. If we implement numeric limits in an NPDES permit, they will be subject to Migden MMPs, unless there is a legislative revision. For stormwater discharges, with huge episodic swings in quality and quantity, it would make more sense for the regional boards to use their judgment in the choice of the most appropriate enforcement tool, rather than having mandatory minimum penalties. The regional board could probably not convene for enough hours to deal with mandatory minimums for stormwater. As it is, we typically have two-day meetings to take care of existing Board business. The Executive Officer should have the authority to issue and finalize smaller penalty complaints and orders.
2. Flow: The difficult part of storm water sampling is measuring flow. If the volume is large, it dilutes a small amount of pollutant to non-detect levels. If the volume of runoff is small, that same amount of pollutant can be over benchmark values. Couple that issue with the huge fluctuations in flow and we have a high degree of difficulty in using meaningful numeric limits.

Thus, in my view, BMP's work best when 1) they have proven effectiveness, 2) they are properly implemented, 3) they are cost-effective for the discharger (and perhaps even desirable to use; at a minimum, they are within the range of expertise and practices of dischargers) and 4) staff or some other third-party can observe and enforce their implementation. Absent these conditions, I can see how BMP's fail to achieve their intended goals.

Enforcement of Water Quality Laws

11. I am aware of the Hilmar Cheese Co. case in the Central Valley region. In my experience, Region 3 staff are very aggressive enforcers; and if anything, our Board members are even more aggressive. Some of the largest storm water violation penalties in the state have been issued by Region 3. Board members carefully scrutinize the enforcement reports for each Board meeting, and examine enforcement actions very closely. On this issue, I can safely say that the staff do aggressively pursue violators, and are spurred on by a very pro-enforcement Board. We also regularly coordinate with other law enforcement agencies where appropriate, such as with District Attorneys and the U.S. Attorney. Our Counsel and Executive Officer keep us apprised of these efforts.

Water Quality Monitoring

12. Region 3 staff do the best job monitoring water quality that they can, given their resources. Monitoring is a frustrating issue for Region 3, and I suspect for the rest of the state as well. Ideally, Board staff should avail themselves of more baseline monitoring data, more longitudinal data, and more continuous data -- and each of these in far more locations throughout the region. Each of these

improvements (baseline, longitudinal, continuous, more replicates) is expensive. Dischargers energetically resist taking these improvements on themselves, and Board staff lack the resources to do so, even though they agree with my assessment. Some of these monitoring improvements can be achieved with third-party funding (from SEP's or grants), but such funding is difficult to acquire and hard to rely upon. Nonetheless, I am very open to assisting the Board in raising third-party funds for monitoring improvements (whether these are carried out by contractors or by Board staff themselves), as we cannot adequately address water quality monitoring needs within current funding levels.

The first and most important need we have for the Central Coast Ambient Monitoring Program is to increase staffing resources. Right now, only 0.8 PY (or FTE) are provided to our Region for monitoring activities. Because we believe the monitoring activities in our Region to be useful to all other programs, we have dedicated funds from other sources that have some flexibility to support an additional PY towards monitoring. We also currently support a full-time data manager through contract dollars associated with settlement funds. However, to improve the long-term success and stability of our monitoring program, we require at least one more full-time position dedicated towards monitoring. Additionally, if we had one full-time state position dedicated towards data management we could transition from tenuous contract staff support to a fully institutionalized data management program.

Though our Central Coast Ambient Monitoring Program has been successful at detecting new problems and documenting known problems, our budget has always limited the scope of the monitoring we can undertake. For example, we sample approximately 60 sites (some rotating on a five-year cycle, some fixed) on a monthly basis for conventional water quality. However, we have never had the budget to sample water for metals or other priority pollutants. We have staff in the field available to collect the information, we have the data management tools to utilize it, but we do not have sufficient lab budget to conduct this type of work. We sample for toxicity and sediment chemistry at only a subset of our sites, again because of laboratory budget constraints. Adequate laboratory budget would increase the data we have available for decision-making, without significant additional field sampling time.

We conduct habitat assessment at all of our bioassessment sites, which gives us some sense of habitat quality at our monitoring sites. However, we have not had the staffing support to conduct comprehensive assessment of stream and riparian habitat. Given that sedimentation is one of the most common problems in our Region, our monitoring program would be much more "robust" if it addressed this problem. This task requires significant additional field time and a large new data management effort.

13. SB 72 requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

SB 72 requires the State Board to develop, before January 1, 2003, minimum monitoring requirements for regulated municipalities that were subject to a storm water permit on or before December 31, 2001, and minimum standard monitoring requirements for regulated industries, as specified, and would require the requirements established in accordance with the bill's provisions to be included in all storm water permits on or before July 1, 2008. For the purposes of determining constituents to be sampled for, sampling intervals, and sampling frequencies, to be included in a municipal storm water permit monitoring program, the regional board shall consider the following information, as the regional board determines to be applicable:

- (A) Discharge characterization monitoring data.
- (B) Water quality data collected through the permit monitoring program.
- (C) Applicable water quality data collected, analyzed, and reported by federal, state, and local agencies, and other public and private entities.
- (D) Any applicable listing under Section 303(d) of the Clean Water Act (33 U.S.C. Sec. 1313).
- (E) Applicable water quality objectives and criteria established in accordance with the regional board basin plans, statewide plans, and federal regulations.
- (F) Reports and studies regarding source contribution of pollutants in runoff not based on direct water quality measurements.

Although the State Board is still working on the revisions to the statewide industrial permit, and the municipal Phase II permit is scheduled for revision in a couple years, our regional board considers the above listed factors. We recently had a hearing on a group of Phase II municipalities and required them to detail their Plan more before bringing it back to us for reconsideration. With our recently updated Salinas municipal permit (our only Phase I permit), much of our Board discussion at the hearing was about the monitoring program, sources, and how to best coordinate with other monitoring programs such as monitoring we require through our regulation of irrigated agricultural runoff, and through our own Central Coast Ambient Monitoring Program (CCAMP). We are one of the few regions with our own regional monitoring program (perhaps the only region? SF Bay Regional Board's monitoring program is for the Bay, not the whole region). Also, as soon as the State Board provides statewide guidance per SB72, our Executive Officer can modify the Salinas monitoring program.

In the meantime, through CCAMP, we have prototyped a new approach for acquiring both management practice and monitoring data as part of agricultural regulatory program development. Monitoring program and stormwater staff have been discussing how to adapt this approach for use by the stormwater program. The approach includes web-based reporting of management practice strategies and water quality monitoring data in a geographic framework. We anticipate that adaptations of the existing software for the stormwater program will be developed in more detail over the next six months, with implementation to begin in 2006.

Cleaning up Impaired Waters

14. In my view, this once again comes down to a matter of staffing resources. The information burden on staff for developing pollution loads is huge. Moreover, once impaired waters have been identified, many stakeholders need to be involved in developing pollution loads that are appropriate, effective and ultimately acceptable to those who will be implementing them. Given the magnitude of this effort, Region 3 staff are woefully too few and underfunded. Even marginal improvements in staffing resources (a few more FTE) would make a great difference.

Our staff does a fairly good job staying on schedule identifying impaired waters and developing pollutant loads that will lead to cleanup. In fact, we have one of the most comprehensive regional monitoring programs, which provides us with a basic body of data to rely on for identifying impaired waters. Additionally, we have dedicated monitoring staff that collects samples from our waters regularly so they are familiar with the conditions of our waters. We also have dedicated and highly qualified staff assigned to determine the appropriate pollutant loads; they manage and complete multiple projects every year.

These efforts could be improved by the following:

- Insist on improving our identification of opportunities and constraints to determining pollutant loads, and increasing staff's problem-solving to address constraints;
- Support staff recommendations to address constraints and improve development of loads (e.g., provide contract funding, expedite contract process, address problems with the Basin Plan);
- Based on understanding of opportunities and constraints, insist on oversight of staff efforts and performance evaluation of staff and Regional Board programs by Regional and State Board management;
- Continue to require vacancies in the Total Maximum Daily Load program to be filled as quickly as possible by prioritizing recruitment or by transferring staff from other programs into the vacancies as soon as possible;
- Improve staff recruitment capabilities by reviewing and modifying existing qualifications for environmental scientists and engineering geologists (which do not recognize degrees, such as geography, that often provide excellent watershed and landscape scale analytical skills);
- Increase legal resources to more effectively address the increased legal review and advice needed on the increased volume of technical determinations generated by technical staff and challenges made by stakeholders;
- Recognize need, improve methods and increase resources for outreach and education and for information management systems to notify and track responses from diverse and numerous newly affected parties (e.g., multiple private landowners discharging nonpoint source pollution);
- Increase resources for data collection, data management and data analysis, or in the event of using existing resources only, continue to look for smarter ways to gather and use information;
- Dedicate staff and resources to change outdated or inaccurate Basin Plan water quality standards that thwart efforts to establish appropriate thresholds for determining impairments and setting pollution loads;
- Increase grant funds for, or, regulatory authority to require, dischargers and other managers of water bodies (e.g., water districts) to collaboratively perform pollutant loading assessments on a watershed scale, such as source identification, quantification of existing loads, quantification of amount of load reductions, assignment of responsibility for meeting loads, and development of implementation plans to achieve the loads.

As far as implementing the pollution loads, I recommend the following steps:

- Elevate the priority of implementing established loads in other existing implementation activities and regulatory programs (e.g., Nonpoint Source Pollution Control, Waste Discharge Permitting, Stormwater);
- Educate staff in other implementation and regulatory programs about the relationship between established pollution loads and implementation activities and oversight;
- Increase current Total Maximum Daily Load Development resources or encourage more use of current Total Maximum Daily Load development resources for implementation oversight and tracking;
- Recognize need, improve methods and increase resources for outreach and education and for information management systems to notify and track compliance from affected parties (e.g., multiple private landowners discharging nonpoint source pollution);

- Increase resources for numeric target and load reduction data collection, data management and data analysis;
- Provide grant funding to agencies and landowners required to implement load reduction activities;
- Other agencies should, wherever appropriate or possible, coordinate monitoring and assessment activities with our agency, provide technical assistance regarding load reduction strategies, coordinate and leverage their grant funds towards implementation of pollution loads, enforce their authorities if more effective than ours to insure pollution reduction (e.g., land use planning agencies should condition approval of urban development projects with water quality protecting conditions)- these agencies could enter into Management Agency Agreements or Memoranda of Understanding with our agency and/or be asked to report periodically on their efforts to support implementation of pollution loads.

15. Most threats to impaired waters originate in land uses that are regulated by other entities and/or controlled by private owners. Region 3 must rely on many local governments to minimize nonpoint source discharges to impaired bodies of water. For example, sediment discharges in the Santa Cruz Mountains will probably never fall dramatically until the county improves private road construction and maintenance (especially of steep, unpaved roads close to creeks, rivers and streams). Fecal coliform levels in the San Lorenzo River will remain high if/until Santa Cruz County, its cities and mountain dwellers improve their management of septic tank systems (or replace them with sewer systems altogether).

The Regional Board enjoys very good working relationships with local governments and its permittees. I'm confident that staff will work very collaboratively with these partners to implement pollution loads; however, I imagine that there will be some instances when the Board will have to use more aggressive means to motivate cooperation by other entities.

Timber Harvest

16. How would the new waiver change the level of monitoring that is now occurring?

It's hard for me to answer this question prior to the July 8, 2005 meeting; however, if the Board adopted the General Conditional Waiver exactly as staff has developed it, monitoring would undergo several changes. First, there would probably be less in-stream water quality monitoring (because the Board understands that grab samples are unlikely to catch big discharges -- sediment "spikes" -- unlike sophisticated but expensive continuous monitoring equipment). Second, there will be more visual and photo-point monitoring. Third, there may be more on-site inspections by staff, especially of timber harvest projects that are ranked most threatening to water quality.

In an ideal world, much more continuous monitoring equipment would be used (up-and down-stream of timber harvests; up-and down-stream of major stream crossings) on timber harvest projects. Again, the impulse here would be to increase public accountability by generating continuous, objective, in-stream data directly related to land uses causing impairment -- in essence, turning nonpoint source timber harvest projects into point sources so that sediment discharges from timber harvest operations can be distinguished from background discharges caused by roads, natural erosion or other land uses. Once again, the problem is cost. The monitoring equipment is very expensive; in some cases, the equipment and its maintenance may cost more than the value of timber extracted.

The Central Coast Water Board has required monitoring of Timber Harvest activities since the beginning of 2003. Since then, Water Board staff have refined the monitoring programs for the various levels of timber harvest activity. The new proposed waiver would not change the level of monitoring for timber harvest activities that is now occurring in the Central Coast Region (i.e., we are not likely to add new levels of monitoring). Rather, the new Waiver will ensure consistent monitoring across timber harvest activities, such that activities with similar threat to water quality will be required to conduct similar levels of monitoring. Monitoring will range from simple management practice implementation monitoring (visual field inspections) to water quality compliance monitoring (temperature and turbidity grab samples).

As far as staff resources go, 0.6 budget FTE is not adequate to provide support for Board oversight of 20 to 30 timber harvest projects per year, as I mentioned above. Specifically, the Central Coast Water Board has sufficient staff to adequately review the data to determine compliance with conditions of the Order. However, there are additional data review and evaluation that should be conducted that may have to wait until more staff is available. Currently, Water Board staff are using students to conduct necessary background research on timber owner compliance history, water quality compliance monitoring (turbidity, temperature, etc.), and trend analysis. Additional staff would make it possible to follow up on the student research and more effectively 'ground-truth' our conclusions.

Perchlorate

17. Perchlorate contamination has been confirmed at five locations in the Central Coast Region, including the former Olin Corporation/Standard Fusee flare manufacturing facility in Morgan Hill, the former Whittaker Ordnance facility near Hollister, the United Defense testing facility near Hollister, Teledyne McCormick-Selph testing and development facility, also near Hollister, and Vandenberg Air Force Base in Santa Barbara County. The only site with a significant off-site groundwater plume is the Olin site. The Olin plume extends approximately 10 miles downgradient, from Morgan Hill almost to Gilroy. Within the last 12 months, the Regional Water Board issued Olin Corporation and Standard Fusee two cleanup or abatement orders, one requiring plume characterization and a cleanup proposal, and the other requiring replacement water supply to well owners with perchlorate-impacted wells. Both orders require extensive perchlorate groundwater monitoring. The Whittaker Ordinance and Teledyne McCormick-Selph facilities have completed investigations and are extracting and treating perchlorate-impacted groundwater. The United Defense site was just recently identified and initial investigations are underway. Of the seven wells on the United Defense site, two have had perchlorate detections ranging from 15 micrograms per liter ($\mu\text{g/L}$) to 34 $\mu\text{g/L}$. Off-site impacts have not been identified with United Defense site activities. Groundwater remediation is underway at Vandenberg Air Force Base; however, there are no perchlorate-impacted drinking water wells. The Regional Water Board is continuing to aggressively search for additional perchlorate sites.

Approximately 1,200 private wells have been impacted in the Central Coast Region; nearly all of the impacted wells are downgradient from the Olin Site. None of the perchlorate-impacted wells have been ordered closed. In instances where the responsible party is known, Regional Water Board staff requires the responsible party to provide treatment or alternative water to the affected well owners. Olin Corporation is required to provide over 650 well owners with bottled water. Olin has installed four permanent ion-exchange treatment systems and will install treatment systems on private wells with

perchlorate concentrations at and above six $\mu\text{g/L}$. Whittaker installed an ion-exchange treatment system on an adjacent, off-site agricultural well with perchlorate impacts.

18. The Regional Board is aggressively pursuing investigation and cleanup at the above-mentioned sites. The McCormick Selph, Vandenberg and Whittaker sites are currently performing pilot scale testing of cleanup alternatives and will be submitting final cleanup plans later in 2005. The United Defense site is currently investigating the extent of contamination and will be proposing cleanup alternatives in 2006. Olin is already cleaning up perchlorate on-site (both soil and groundwater) per our order, cleaning up off-site groundwater via the well head treatment mentioned above, and also responding to our order to provide additional off-site groundwater cleanup. The Regional Board is very concerned about the perchlorate sites and has made them a priority for Regional Water Board staff. Staff provide updates at every Regional Board meeting to ensure that we are informed regarding site investigation and cleanup activities. When private wells are affected, we have required alternative water supplies for those well owners.

The Regional Water Board has issued Water Code Section 13267 and 13304 investigation and cleanup orders to the dischargers at these sites. The orders require the responsible parties to investigate and remediate the perchlorate pollution. Monitoring consists of installation of wells to facilitate regular monitoring for perchlorate. Where private wells are concerned, the Regional Water Board has ordered sampling to determine when alternative water must be provided. Lastly, we have ordered soil and groundwater treatment at all but one site (United Defense is still in the investigation phase). In Olin's case, soil treatment has lowered perchlorate concentrations from 7,000 ppb down to less than 20 ppb.

In sum, Board staff have been vigilant and aggressive in overseeing this problem. The Board required Olin to provide interim uninterrupted drinking water to all well owners whose wells had perchlorate levels as low as 4 ppb. With the change in the Public Health Goal to 6 ppb, Olin will be providing water for those using wells above that concentration. The Board and its staff works closely with the Santa Clara Valley Water District, municipalities in southeastern Santa Clara County, dischargers and the public.

Please don't hesitate to contact me for further information.

Sincerely,



Daniel Press

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June 16, 2005

Marie Barrett
2035 Forrester Road
El Centro, CA 92243

Dear Ms. Barrett:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Colorado River Basin Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

New River Pollution

The New River has been called the most polluted river in the United States with raw sewage and industrial waste being discharged into the Mexican portion of the river. A new project, Mexicali II, will collect and treat 14 million gallons per day of raw sewage that is now discharged into the New River.

16. Please outline your board's role in addressing water quality issues such as sewage collection and wastewater treatment on the New River.
17. What progress has been made towards bi-national cooperation in restoring the New River? How will future progress impact the New River?

Chromium 6

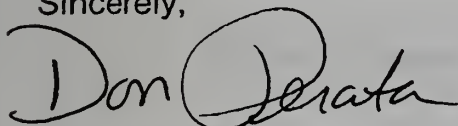
A PG&E compressor station at Topock has contaminated groundwater with Chromium 6 or hexavalent chromium. Test wells have detected hexavalent chromium seventy feet from the Colorado River. As an interim measure a treatment plant is being considered for the area, but there are concerns from Native American tribes that it will be built on sacred land. Current studies for evaluation and selection of a final remedy are ongoing.

18. What is your board's involvement in the hexavalent chromium groundwater contamination near Topock? Has your board discussed the concerns of the Native American tribes concerning the building of the interim treatment facility on sacred land?

19. What do you see as the final remedy for the cleanup of this groundwater contamination?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink that reads "Don Perata". The signature is fluid and cursive, with the first name "Don" and last name "Perata" clearly distinguishable.

DON PERATA

DP:KW:dc

July 5, 2005

Nettie Sabelhaus
 Senate Rules Committee Appointments Director
 Room 420
 State Capitol
 Sacramento, Ca 95814

Re: **Marie Barrett: Response to Senates Rules Committee Letter of 16 June 2005**
Confirmation Questions

1. **Goals:** My goal is to be a fair, responsible and informed member of the Water Quality Control Board, Colorado River Basin Region (CRBR) who listens to information provided by staff and the public.
2. **What help do I receive?** The local Board meetings provide presentations from different agencies (such as USEPA), CRBR staff and public input on various issues before the Board. I am encouraged to contact staff with any questions I might have. CRBR staff offers a monthly tour of Mexicali. The State Board holds periodic statewide Water Quality Coordinating Committee meetings. I plan to attend the next one offered in September.
3. **Suggestions:** Since I am a new board member, I have little knowledge regarding the underlying reasons/previous decisions for some of the issues that are brought before the Board; it would be helpful to have a timeline of previous actions/decisions and what decisions are dictated by legislation and cannot be modified by Board actions.
4. **Training:** Before our first board meeting an orientation meeting (Office of Chief Council) was held with the Board lawyers to introduce us to ethics requirements. I have also taken the Ethics Training (very conveniently online). Catherine George, CRBR lawyer is available for guidance on conflict of interest. I discuss issues with Ms George to determine if I need to recuse myself. I have recused myself on some issues.
5. **State Board/Regional Board Relationship:** As a new board member, I have not had much contact with the State Board. I have participated in a joint tour organized by the State Board and was very impressed with the organization and outreach to help inform agencies about our region. I am not aware of any CRBR issues that have been appealed to the State Board. I would hope that issues would be settled at the local level, where knowledge of local conditions would be higher.
6. **Specific Areas of Operation:** I have heard no complaints regarding grant administration. In fact, the Imperial County Farm Bureau was complimentary

regarding their grant. One area that needs to be looked at is the issuance of fines. For example, a local township is being fined an amount they will never be able to afford because of the poverty in the area. Now that they have a fine levied against them, the possibility of finding a grant/funding is greatly diminished. This situation should never have been allowed to progress to this point. I think the main aim should be to fix the problem. It also seems inefficient to issue fines and then rescind them within a week. My understanding is that these situations occur because of legislation that takes away Board flexibility.

7. **Specific Areas of Operation/Public Scrutiny:** I received a copy of the Region 7 Fiscal Management System and found it very difficult to follow. Perhaps that would be an area that could be improved – an easier to understand Budget printout. As I understand Region 7 budget, Region 7 is allocated \$4.46 M. Board meetings are approximately every other month and last about 2 hours. It is difficult to discuss very many issues during this time frame and budget is not one that has been discussed during my short tenure. I do feel that it is critical to keep the public informed of all activities of public agencies and encourage public participation. Unfortunately, most people cannot attend meetings during the work day in an area that is over 1.5 hours travel time. Perhaps revolving venues would encourage public participation.
8. **Funding:** As in all endeavors, decisions have to be made on what are the most important issues that deserve funding. To my knowledge, no important environmental problems in Region 7 have been relegated to the back burner because of funding. I have confidence in our Executive Officer(EO) and Staff that if there were a funding crisis that it would have been brought to the Board's attention. I do feel it is important to maintain a high level of staff expertise and funding salaries to a competitive level is important.
9. **Discharge Permits:** I have no doubt that stormwater discharge permits are important in areas that receive rainfall. Region 7 is a desert region that receives less than 2 inches of rain per year. Therefore, Region 7 would be better served by concentrating their efforts in a more critical area. I have concerns about imposing a statewide strict numeric limit on anything because this is such a large state with varying environmental conditions. I would like to see the data quoted regarding BMP/numeric effluent limits. Without knowing the parameters of the two studies it is difficult to make a determination. The questionnaire did not include any information from BMP proponents. Before I make a decision, I like to obtain input from all sources. Pollution is pollution whether it comes from a readily identifiable source (point) or a difficult to determine (nonpoint) source.
10. **Numeric limits:** see above
11. **Water Quality Enforcement:** Our EO has recently formed an enforcement unit. The Board is given a quarterly noncompliance report. Enforcement orders are reported on at the Board meetings and mailed to members. The Topoc situation

was handled with an emergency CEQA response. Our Regional TMDL silt program is a leader in the nation. I am confident all issues are being handled by staff. I think it is wrong to assume all Boards and staff operate in a similar manner. Of course, Region 7 does have an issue which we are incapable of handling – pollution sent to us by Mexico via the New River.

12. **Funding/Water Quality Monitoring:** In the case of New River, Region 7 monitoring clearly shows that it is a horrendous water quality problem and yet there is not funding forthcoming from State or Federal agencies to handle this problem and clean up this river. Our State is in a budget crisis; there has to be a balance between monitoring and cleanup; I would hope that the State Board would be making those budget decisions to benefit the entire state. I am not aware of any budgetary issues in Region 7 that restricts necessary monitoring.
13. **Standardized Stormwater Monitoring:** Region 7 is a desert region that receives less than 2 inches of rain per year. While this is not a top priority, where monitoring indicates a problem, measures will be taken to improve the situation.
14. **Impaired Waters/TMDL:** Region 7 has been a leader in responding to TMDL requirements.
 - Silt/Sedimentation: Region 7 has teamed with the Imperial County Farm Bureau to initiate an award winning program (Governor's Award for Environmental Stewardship). Over 90% of the area's farmers have signed up in the program and the silt load has been decreased by 50% in less than 3 years.
 - Pathogen standard has been adopted. Unfortunately, Mexico is the main contributor to the pathogen load in the New River and therefore it will be practically impossible to meet this standard.
 - Selenium objective is stated in the Basin Plan. Again, with no practical way to remove selenium and the fact that it is delivered to our Basin as a component of the Colorado River water it will be very hard to remove this compound.
 - Salinity objective is in the Basin Plan.
15. **Pollution Loads/Other Agencies Responsibilities:** Region 7's primary problem is the Pathogen load found in the New River. Since this is an international/treaty problem, I feel the USEPA should be doing more to clean up this problem. At a presentation to the Board, USEPA representatives stated that since 1996, they have spend \$100s of millions in Mexicali to fix the problem. It is not fixed; Imperial Valley is subjected to raw sewage being dumped into the New River. I think USEPA needs to be held accountable for this problem. I believe our EO/Staff are doing all they can to accomplish this.
16. **Sewage/New River:** All wastewater treatment facilities in Region 7 are regulated and monitored by staff. Those that fail to report and/or have violations are

handled according to regulations established by the legislature. We are currently very concerned with the situation in which the Niland Sanitary District has become mired. I have to assume that you mean sewage collection and wastewater treatment prior to the raw sewage crossing the international border and becoming Region 7's problem. Staff monitors the water quality of the New River but unfortunately improvement of the situation is beyond the capability and budget of Region 7. Fortunately there are two citizens' groups – the Citizens' Congressional Task Force on the New River (building wetlands along both the New and Alamo Rivers) and the Calexico New River Committee (piping New River through Calexico) who are working on the problem since a political solution has not happened. The Board and Staff encourage these two entities. The Board is certainly encouraging USEPA to fund this cleanup.

17. Bi-National Cooperation: Region 7 is a part of the Bi-national Technical Committee for Clean up of the New River which includes the following agencies:

- Imperial Irrigation District
- County of Imperial
- IBWC
- USEPA
- State Water Board

Region 7 keeps track of U.S. activities in Mexicali to ensure these activities/funding/resources benefit our basin. We also cooperate with Mexican monitoring efforts and make our data available to interested parties.

One of the things that is disturbing to me is that the new Mexicali II Wastewater Treatment Plant will be sending the clean water to the Rio Hardy instead of New River which will in essence cause a concentration of pollutants rather than a reduction plus it will mean less water going to the Salton Sea.

18. Topock Contamination: My understanding of that situation is that due to high reading of hexavalent chromium in wells close to the river, an emergency CEQA was necessary to protect human health. I live downstream from this pollution plume and feel it is the Board's responsibility and mandate to protect water supplies. The plant is completed and ready to start the clean up necessary to protect health and water quality. Your statement is that a treatment plant is being considered – my understanding is that it is built and ready to be placed online. It is important to protect cultural heritage of all cultures but as a practical matter the plant is built and it should be used to protect the health and water quality of those living downstream.

19. Toprock Final Remedy: I believe it is necessary to proceed as we have started. The best science available is being utilized to provide a solution. As technology advances, treatment will be modified to incorporate these advances. Monitoring will be ongoing to determine the effectiveness of the new treatment plant and the wells will continue to be monitored to determine if concentrations exceed state safety standards.

CALIFORNIA LEGISLATURE

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COMMITTEE ASSISTANT

June 16, 2005

Jeffrey Hays
543 E. Miraleste Court
Palm Springs, CA 92262

Dear Mr. Hays:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Colorado River Basin Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

New River Pollution

The New River has been called the most polluted river in the United States with raw sewage and industrial waste being discharged into the Mexican portion of the river. A new project, Mexicali II, will collect and treat 14 million gallons per day of raw sewage that is now discharged into the New River.

16. Please outline your board's role in addressing water quality issues such as sewage collection and wastewater treatment on the New River.
17. What progress has been made towards bi-national cooperation in restoring the New River? How will future progress impact the New River?

Chromium 6


A PG&E compressor station at Topock has contaminated groundwater with Chromium 6 or hexavalent chromium. Test wells have detected hexavalent chromium seventy feet from the Colorado River. As an interim measure a treatment plant is being considered for the area, but there are concerns from Native American tribes that it will be built on sacred land. Current studies for evaluation and selection of a final remedy are ongoing.

18. What is your board's involvement in the hexavalent chromium groundwater contamination near Topock? Has your board discussed the concerns of the Native American tribes concerning the building of the interim treatment facility on sacred land?

19. What do you see as the final remedy for the cleanup of this groundwater contamination?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,



DON PERATA

DP:KW:dc

STATEMENT OF GOALS

1. To provide consistent effective leadership to Board's Executive Officer and staff.
2. Timely action on compliance actions
3. Bring experience in infrastructure development, funding and community involvement.
4. Fair minded oversight in review and decisions affecting communities and users.
5. Protection of natural resources.

STATE/REGIONAL BOARD ROLES

2.

During my brief service on the Regional Board, I feel I have been provided with more than sufficient support from my fellow board members and staff. I have had limited need to access the State Board at this point, while I understand and believe their support to be readily accessible both personally and through on-line sources. I anticipate attending one of the State Board's Water Quality Coordinating Committee meetings to further my initiation and understanding of my role in water quality policies and issues.

The local staff have been extremely diligent in providing supporting materials in a timely manner and ensuring I am briefed on past actions, policies and other relevant information prior to board meetings. Local staff have arranged for or made presentations to our Board to update newer board members about on going concerns and past activities to provide a clearer prospective on the Regions involvement with the Salton Sea, New River, the PG&E Topock facility, and improvements to facilities in Mexicali, Mexico.
3.

While I have experience in developing and funding water and sewer systems throughout rural Southern California, I still lack confidence in fully understanding all terminology and practices related to water quality compliance. I believe that and would appreciate some remedial training or outlines on programmatic terminology, practices and compliance requirements to increase my capacity during my initial tenure.

When larger scale or more complex concerns must be addressed, I believe it is important for one or more board members be able to participate in applicable site visits to gain more insight on the entire impacts and local conditions. I would also encourage board member attendance at local civic meetings to understand local leaderships comprehension on impacts by the Regional Board.
4.

I and other new board members met with legal counselors of the State Board to address preventing any appearance of a conflict of interest in our new role. I understand the standards and actually discussed my previous involvement with several agencies in Imperial County during my career with USDA Rural Development.

I understand that anytime my roles outside of the Regional Board, may create an appearance of beneficial impact to myself, employers or my circle of influence, I must and shall recuse myself. As I noted, if my past work in infrastructure development may be a concern, I will discuss with Regional Board's counsel for clarification.

Additionally, I will be taking additional Ethics training from the Attorney Generals website/video to ensure compliance with conflict of interest laws and regulations under the State FPPC.

6.

I understand the State Board institutionally provides fiscal authorization, acts to implement state policies through the regions, and serves in an appellate review capacity for regional decisions. The State Board provides legal support through state staff and policy support through our State Board liaison Mr. Pete Silva.

I have little actual experience with the concerns raised in this question regarding back end policy decisions. I do know during my interviews for this position, I was selected to bring a more effective and dynamic leadership role to regional decisions.

My experience in working with rural communities, of which our region mostly comprises, they generally are lost or overridden in any statewide policy decisions. I do believe broadminded policies can and should be implemented at regional levels to ensure the overall impacts to rural communities are considered with scaled consequences.

Having worked for the Federal Government for 16 years, there is always the reality that program delivery is always dependant on budget approval and which typically does not align with time requirements of the funding recipient's needs. I must assume that is a critical gap in program delivery not always appreciated by the ultimate recipients. I am not aware of any specific examples of inefficiency at our Regional Office, regarding funding approval. In fact our staff are very effective in assisting local agencies in securing funding for priority projects.

Delegation of minimal impact or overlapping authorities can reduce inefficiencies such as:

- a. Permit issuance for certain waste discharge permits for minimal impact activities should be delegated to Executive Officer to expedite issuance of new and renewal of existing permits.
- b. Regional Boards could handle all landfill responsibilities currently under the IWMB. As it stands today, there is significant overlapping in this area between the Regional Board and Integrated Waste Management Board.

7.

Since the Regional Boards obtain their funding allocation from the State Board, it is not realistic to ask for additional scrutiny that would be effective. If budget authority was delegated directly to the Regional Boards, then more local public scrutiny would be applicable to ensure funding is appropriately allocated to the region's priorities.

Having worked in the community development arena, I find that most communities or their representatives have little concern over administrative budgets unless they are attempting to saber rattle.

If you are seeking more public involvement in the oversight of operations, it is unrealistic to secure routine community involvement for such technical programmatic enforcement. It would be better to send staff and Board members to the communities impacted to explain actions and request support for better management practices.

Furthermore, direct effective oversight will result from the appropriate selection of Regional Board Members, and providing direction with their selection to improve performance.

8.

No. Additional funding should be allocated to implement control of non-point pollution sources increase monitoring of ground and surface waters in the region. A "contingency fund" could be established to allow local boards to allocated funding as needed for specific enforcement or emergency actions. This fund could not be used for general administrative deficits other than targeted staff costs to support the appropriate action.

WATER QUALITY PERMITTING

9.

I believe that discharge permits should be implemented on a regional basis as appropriate to their conditions. Since the Colorado River Basin Region is primarily a desert environment, it should not be generalized into permitting requirements of non similar regions. In our region's case, Best Management Practices are an appropriate tool for implementing the storm water program to protect the beneficial uses. Specifically since our desert area storm water does not pose as serious threat to water quality as it does in other areas of the state.

10.

I suggest that numeric limits are appropriate for point source discharges particularly large volume sewer treatment plants. The enforcement of water runoff effluent limitations it is not technically feasible due to the difficulty of sampling the receiving water bodies.

ENFORCEMENT OF WATER QUALITY LAWS

11.

Our local staff were recently reorganized to form an enforcement unit. Board Members receive copies of enforcement orders. Our Executive Officer provides a follow up report at the next Board Meeting on the orders. Additionally, a quarterly non-compliance report is presented to the Board.

Our staff continue to respond rapidly to non-compliance and implement progressive enforcement as necessary. Timely enforcement is necessary to protect the environment and minimize the fiscal impact to our smaller rural communities.

WATER QUALITY MONITORING

12.

I believe we are modestly meeting our monitoring goals for most water sources. However as our regions growth rate continues to accelerate, more funding (i.e. SWAMP) is required for monitoring of our two major sources of drinking water, the Colorado River and groundwater; specifically for tracking surface water quality.

13.

This Board has revised all of its storm-water permits to ensure compliance with the monitoring and reporting requirements under SB 72.

CLEANING UP IMPAIRED WATERS

14.

I would begin with sustained funding levels that can provide the technical support to meet the expected time tables. Water quality monitoring programs have been historically under funded and are among the first programs that get cut during the budgeting process.

In the case our primary watershed, the Salton Sea watershed, the TMDL process is unsuitable to address certain water quality impairments. Specifically, the salinity impairment cannot be realistically controlled through the TMDL process because the Sea is a closed basin. The legislature recognized this dilemma and directed the State Department of Water Resources to come up with restoration alternatives for the Salton Sea, as part of legislature that addresses the State Quantification Settlement Agreement for Colorado River water.

In spite of the aforementioned limitations and challenges, our Region has a very successful record of TMDL implementation. The Regional Board has adopted silt TMDLs for the entire Imperial Valley to control water quality impacts from agricultural runoff. The TMDLs cover about 500,000 acres of prime ag land in the State. Imperial

County Farm Bureau developed and is implementing a TMDL Program which organized and assists Valley farmers to comply with TMDL requirements. The ICFB program received a Governor's Environmental and Economic Development Award for 2004. The silt TMDL compliance rate for the Imperial Valley exceeds 95%.

The Regional Board has also adopted a Pathogen TMDL for the New River. Unfortunately, discharges of wastes from Mexico continue to cause violation of the TMDL. The Regional Board views pollution from Mexico a federal responsibility for control and cleanup.

Our local staff have already drafted the following TDMLs:

- a. Pathogen TMDL for the Coachella storm water channel; a Pathogen TMDL for the Palo Verde Outfall Drain, which is a tributary to the Colorado River;
- b. A Trash TMDL for the New River (scheduled for Board consideration of adoption this Summer);
- c. A Dissolved Oxygen TMDL for the New River (also scheduled for Board consideration of adoption this Summer);
- d. A TMDL for the New River that addresses 7 different Volatile Organic Constituents (to be completed in draft form by October 2005); and
- e. A nutrient TMDL for the Salton Sea (to be completed by 2006). That takes care of 80% of all the TMDLs we listed in our Region's 303(d) List.

15.

Our regions approach has been to reach out and educate our key stakeholders (e.g., farmers, water districts, and farm bureaus) about the Clean Water Act (CWA) TMDL requirements. Staff have also looked for funding opportunities to help responsible parties defray costs of implementing load reductions and comply with TMDL requirements; we have also formed Technical Advisory Committees for TMDL development and identification of management practices to comply with TMDL requirements.

The Imperial County Farm Bureau is the leader in implementing our silt TMDLs for the Imperial Valley. We have also enlisted the help of UC Agricultural Extension in Holtville to help with the TMDL program for Imperial Valley.

From an implementation perspective, our TMDLs direct the staff to conduct specific monitoring and surveillance activities to track load reduction and TMDL compliance; our TMDLs also direct executive staff to implement timely and progressive enforcement, including issuance of administrative civil liability complaints against violators of TMDL requirements.

The federal EPA and the International Boundary and Water Commission have significant responsibility for dealing with New River pollution from Mexico. Historically they have been ineffective in addressing the problem. Also, when it comes to reducing Selenium loading in the Imperial Valley, the State of Colorado is the most significant source of selenium in the Colorado River, but it is not adopting and implementing TMDLs for its

selenium impaired waters, which end up being the source water for the Imperial Valley and the main water supply for the metropolitan areas of Southern California.

NEW RIVER POLLUTION

16.

Our Board has the responsibility for addressing the New River's water quality problems attributable to activities in the United States, but as stated in the question, most pollution comes from Mexico.

However, our Board has been actively involved in the cleanup of the New River and has been a significant force in molding the proceedings. Staff participate monthly as members of the Bi-national Technical Committee (BTC) for the New River/Mexicali Sanitation Program. The BTC oversees implementation of and recommends sanitation projects for the Mexicali area to cleanup the New River at the Border.

Regional Board staff participates in monthly "observation tours" of the New River in Mexicali to evaluate bi-national projects and cleanup progress and has monitored the water quality of the New River since 1975. Currently, we monitor New River water quality immediately downstream of the Border, in Calexico, on a monthly basis. The main purpose of the monitoring is to assess to what degree the sanitation projects improve water quality of the New River at the boundary, alert downstream communities of water quality threats, and make representations to the US Government about pollution from Mexico.

As mentioned in a previous answer our Board has adopted a Pathogen TMDL for the New River. The TMDL sets a load allocation for the river immediately downstream of the Border. Discharges of wastes from Mexico cause significant violation of the TMDL.

Our Board was also instrumental in getting Mexicali wastewater treatment plant (WWTP) operators trained at the City of Calexico WWTP. The Mexicali operators successfully passed the State Water Resources Control Board's certification examination for WWTP operators.

17.

Bi-national cooperation between the Regional Board and Mexican counterparts is very good, but the actual cleanup of New River pollution from Mexico, has been slow and protracted.

Improvements such as the approximate 20 miles of new sewage collection pipes and related pumping facilities in Mexicali was recently completed at a cost of about \$51 million to rebuild the sewage infrastructure in the old Mexicali I area. Also, construction work on a new WWTP for Mexicali, and its associated pumping and sewage force main

facilities, is well underway. The WWTP is expected to be operational by late 2006. The cost for the WWTP and its associated facilities is about \$26 million

Our Board also provided technical assistance to the State of Baja California to sample its wastewater collection and treatment system to develop a pretreatment program for industries in Mexicali.

Once the new 20-mgd Mexicali WWTP is fully operational, it will be handling the current 10 to 20 mgd of raw sewage that is currently being discharged into the New River. This should result in measurably improved water quality for the New River at the Border, particularly as it relates to pathogens and nutrients.

CHROMIUM 6

18.

Our Board approved three (3) Waste Discharge Requirements (WDR's) for the cleanup of the hexavalent Chromium plume in Topock, CA. Due to the critical nature of the high concentrations of Chromium found in sentry monitoring wells adjacent to the Colorado River, the WDR's were adopted utilizing an emergency CEQA exemption.

Just prior to our most recent board meeting, we were informed of the Ft Mojave Tribe's lawsuit and the recent LA Times article. Representatives from PG&E also made a brief presentation as to their progress in mitigation measures. We did not specifically address the Tribe's position or a reaction at that meeting.

19.

My understanding is that the proposed mitigation of pumping/removal and treatment is the most practical solution for the main part of the contaminated plume. The priority is to increase the extraction pumping rate and establish hydraulic control of the plume and prevent exposure to the Colorado River.

CALIFORNIA LEGISLATURE



SENATE RULES COMMITTEE

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KEITH FELTE
DEPUTY EXECUTIVE OFFICER

PAT WEBB
COMMITTEE ASSISTANT

June 16, 2005

Maurice "Red" Martinez
1712 Carnousite Drive
Banning, CA 92220

Dear Mr. Martinez:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Colorado River Basin Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

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The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

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3. Do you have any suggestions on how they might better assist you?
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know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

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10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

New River Pollution

The New River has been called the most polluted river in the United States with raw sewage and industrial waste being discharged into the Mexican portion of the river. A new project, Mexicali II, will collect and treat 14 million gallons per day of raw sewage that is now discharged into the New River.

16. Please outline your board's role in addressing water quality issues such as sewage collection and wastewater treatment on the New River.
17. What progress has been made towards bi-national cooperation in restoring the New River? How will future progress impact the New River?

Chromium 6

A PG&E compressor station at Topock has contaminated groundwater with Chromium 6 or hexavalent chromium. Test wells have detected hexavalent chromium seventy feet from the Colorado River. As an interim measure a treatment plant is being considered for the area, but there are concerns from Native American tribes that it will be built on sacred land. Current studies for evaluation and selection of a final remedy are ongoing.

18. What is your board's involvement in the hexavalent chromium groundwater contamination near Topock? Has your board discussed the concerns of the Native American tribes concerning the building of the interim treatment facility on sacred land?

19. What do you see as the final remedy for the cleanup of this groundwater contamination?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink that reads "Don Perata". The signature is fluid and cursive, with the first name "Don" and the last name "Perata" clearly distinguishable.

DON PERATA

DP:KW:dc

June 29, 2005

Nettie Sabellhaus, Appointments Director
Senate Rules Committee
State Capital, Room 420
Sacramento, Ca 95814-4900

Dear Ms. Sabellhaus,

This letter is in response to Chairman Perata's June 16, 2005 questionnaire related to my confirmation hearing as a board member of the Water Quality Control Board, Colorado River Region. My responses to the questions are contained below and presented in the same order as the questions.

1. My goals are to improve and protect water quality in the Colorado River Basin Region. More specifically, address Salton Sea water quality problems, New River pollution and the water quality in the Calxico area.
2. Regional Board members get information on complex issues during board hearings from staff. Also, board members provide briefings on their activities as board members. We also get an opportunity to learn about water quality issues during meeting of the Water Quality Coordinating Committee. Those meeting are attended by members from other Regional Boards, State Board members, and other stakeholders who share information on sensitive water quality issues. We also ask questions of our legal counsel and our Executive Officer.
3. I believe there should be some structured training for new Board members. Training could be done in one week (or several days) and should cover the typical water quality jargon we deal with. It would also expose the new Board members to basic water quality law, regulations, and programs; and more clearly define what a Board member role in protecting water quality is. Also, periodic field trips would be useful for Board members to gain insight to water quality issues.
4. I have had formal training as a previous government official for the City of Los Angeles and also worked on different boards. Still, I also received conflict of interest training from the Attorney General's website this year as a new Board member.
5. One of the areas that could be improved is the Administrative area. The legislature could make Regional Boards directly responsible for their budgets. As it stands today, the Regional Board's budget comes via the State Water Resources Control Board.
6. One of the ways to improve efficiency is through the Legislative process and for the Regional Boards to have their own Legislative Analyst. Also, an alternate to the current financial assistance programs is for the Regional Boards themselves not just to manage

but also award the grants. That change would require legislation. Also, each Region could have it's own Public Information Officer for outreach and education purposes and to facilitate communication with the stakeholders.

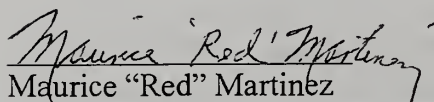
7. Perhaps, more periodic audits of the State Board Budget and operations would help.
8. No. We need more money to control Non-Point Source of Pollution and better monitor ground and surface water of the Region.
- 9/10 This Region gets about an average of 2 inches of rain per year in its Metropolitan area. So naturally it does not face the same Storm water problems as other Regions. We should look at each project on a case-by-case basis before we establish blanket numeric limits more stringent than the ones that best management practices can meet.
11. This Board emphasizes to staff that rapid and progressive enforcement is required when dealing with non-compliance to protect water quality. It also emphasizes that staff should work with the regulated community to find ways to bring them into compliance at the earliest practicable date.
12. The Regional Boards should direct its Executive Officer to request additional funds from the State Board for monitoring purposes. The Executive Officer should also be looking and applying for Grants. See also response to #8 above.
13. In spite of this region being a desert environment, staff reported to the Board that all the Regions Storm water permits comply with SB 72.
14. Part of the problem with developing TMDLs on schedule is that historically the TMDL program has been under funded and/or not funded at all. Development of TMDLs require current monitoring data. Monitoring programs are also under funded. Also, TMDLs are inherently difficult to develop and implement. In spite of these limitations, this Region has a successful program. It currently has the entire Imperial Valley, which includes about 500,000 acres of prime agricultural land, under the TMDL program (i.e. under adopted TMDLs). Also, this Region does not have as many impaired waters as other Regions. There are four TMDLs scheduled for consideration of adoption by our Board this year. If the Board adopts the drafted TMDLs, that would take care of 80% of the TMDLs this Region has listed for development. A more stable and predictable funding would help us sustain the momentum that we now have. Also, dedicated funding not juts for development but rather for implementation of the TMDLs should be allocated.
15. Our approach to implement loads in this Region has been to reach out, educate, and get buy in from the parties responsible for implementing the load reduction and from third cooperating agencies, such as the Imperial County Farm Bureau. We also formed technical advisory committees for identification of management practices to comply with TMDL requirements. We have also recommended cooperating agencies for grant funding to help with TMDL implementation. At the staff level we have a water quality

monitoring program to track pollution load reduction through out the Imperial Valley. Regarding responsibility by other agencies, we believe the federal government has significant responsibility for pollution reduction in the New River as it enters California. Also, we believe the State of Colorado should also be reducing the Selenium load it is discharging into the Colorado River from its Gunnison Watershed. The Selenium is adversely impacting the Salton Sea. See also response to #11 when it comes down to non-compliance with low reduction in our Region.

16. The Regional Board is a member of the Bi-National Technical Committee for the New River/ Mexicali Sanitation Program. The committee is overseeing the construction of a new 20-Million gallons per day wastewater treatment plant and installation of over 21 miles of sewage pipes for Mexicali. This should result in a significant improvement in water quality in Calexico as far as the raw sewage is concerned. However, after these projects are completed planning and construction for a new wastewater treatment facility should begin immediately to handle future sewage flows for the next 20-25 years.
17. The Regional Board has a very positive working relationship with our counterparts in Mexicali. We have cooperated on developing a pre-treatment program for Mexicali and conduct monthly binational observation tours of the New River in Mexicali.
18. The Regional Board adopted 3 waste discharge requirements for clean up of the chromium plume at Topock last year. It also participates in a technical committee headed by the Department of Toxic Substance Control (DTSC). DTSC is lead for the clean up at the site. Nevertheless, the Board is ready to exercise its authorities under the Porter Cologne to ensure clean up proceeds in a prompt manner and PG&E meet its requirements.
19. I believe pump and treat is the most likely remedy for the plume.

Thank you for the opportunity to answer the questions and provide you with my perspective on the aforementioned Regional water quality issues. I trust this information answers your questions. Please call me at (951) 769-3266 if you need additional information on the matter.

Sincerely,


Maurice "Red" Martinez

CALIFORNIA LEGISLATURE

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SENATE RULES COMMITTEE

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DEPUTY EXECUTIVE OFFICERKEITH FELTE
DEPUTY EXECUTIVE OFFICERPAT WEBB
COMMITTEE ASSISTANT

June 16, 2005

Ellen Way
49-500 Rancho San Francisquito
La Quinta, CA 92253

Dear Ms. Way:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Colorado River Basin Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

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These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

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Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
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New River Pollution

The New River has been called the most polluted river in the United States with raw sewage and industrial waste being discharged into the Mexican portion of the river. A new project, Mexicali II, will collect and treat 14 million gallons per day of raw sewage that is now discharged into the New River.

16. Please outline your board's role in addressing water quality issues such as sewage collection and wastewater treatment on the New River.
17. What progress has been made towards bi-national cooperation in restoring the New River? How will future progress impact the New River?

Chromium 6

A PG&E compressor station at Topock has contaminated groundwater with Chromium 6 or hexavalent chromium. Test wells have detected hexavalent chromium seventy feet from the Colorado River. As an interim measure a treatment plant is being considered for the area, but there are concerns from Native American tribes that it will be built on sacred land. Current studies for evaluation and selection of a final remedy are ongoing.

18. What is your board's involvement in the hexavalent chromium groundwater contamination near Topock? Has your board discussed the concerns of the Native American tribes concerning the building of the interim treatment facility on sacred land?

19. What do you see as the final remedy for the cleanup of this groundwater contamination?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,

A handwritten signature in black ink that reads "Don Perata". The signature is fluid and cursive, with the first name "Don" being larger and more prominent than the last name "Perata".

DON PERATA

DP:KW:dc

ELLEN SANDERS WAY
 49-500 Rancho San Francisquito
 La Quinta, California 92253
 (760) 771-4784

July 10, 2005

The Honorable Don Perata
 Chairman
 Senate Rules Committee
 State Capitol, Room 420
 Sacramento, CA 95814

Attn: Nettie Sabelhaus

Dear Senator Perata:

I am writing in response to the questions outlined in your letter dated June 16 regarding my appointment to the Water Quality Control Board, Colorado River Basin Region. Thank you for extending the deadline for submission to July 20. Should you have any questions, you may reach me by cell phone at (760) 831-4233.

Statement of Goals

1. My goals for serving on the WQCB, as a representative of the agricultural industry, include: 1) to ensure that our water quality is maintained at a reasonable level for food production, human consumption, and habitat use; 2) I would like to see that our management team and office staff works as efficiently as possible, given our state's current financial position; 3) I would like to ensure the taxpaying community that they can count on the WQCB to be cooperative, helpful, and consistent in their enforcement of water quality standards.

State/Regional Board Roles

2. Since my appointment to the WQCB, the management team has done an outstanding job of educating me about the complex issues that come before the board. I have received a great deal of reading material to give me the background I need to understand water quality issues of this region. I have also participated in a number of oral discussions with staff and fellow board members.
3. The assistance has been excellent; I see no need for improvement at this time.
4. Prior to attending my first board meeting, the Office of Chief Counsel from the State Board sent legal representatives to our region for conflict of interest training. I found this session to be very worthwhile and helped me understand my duties and responsibilities. I have not had to recuse myself from an issue, but if I do I will make it known, for the record, prior to any action being taken on the issue.

Continued.

JUL 19 2005

Ellen Way - Confirmation Questionnaire
WQCB, Colorado River Basin Region
Pg. 2 of 5

5. At this time, I don't believe I have had enough experience with the State Board to see how our two entities function (or not) together. We have legal representation from the State Board present at each of our regional meetings and I have witnessed little conflict thus far. Our staff seems to work with all interested parties in a spirit of cooperation to reach water quality goals.
6. I am proud to be part of a board that is leading the way in improving operational efficiency. Our management team has conducted successful outreach and educational programs to help solve water quality problems in the region. They have also been very helpful in securing funds for impoverished areas and have standardized the application cycle and ranking criteria for project eligibility. One thing I have noticed is that in many cases a contamination problem involves a number of state agencies. It seems that we could possibly improve efficiency by having one "environmental quality" agency with all of the scientific experts under one roof working together for the same goals. As it is now, the agencies (water, air, integrated waste, toxics, etc...) compete for money, projects, and enforcement power; they are adversaries instead of allies.
7. To date, I have not seen the budget nor has it been discussed at a board meeting. As I understand it, the budget is set by the State Board with some negotiation from the regional office. I strongly support steps to ensure the public is able to have full review of WQCB operations, and the budget process specifically. I get the feeling from staff that we are under-funded and under-staffed to address the water quality issues mandated by the legislature. I plan to research the budget so that I have a better understanding of our financial position.
8. I don't think I have served on the board long enough to satisfactorily answer this question. Most of the issues we have addressed so far are enforcement actions, uncontested waste discharge requirements, and informational updates. We haven't discussed the budget nor had much say over expenditures. I do know that staff is concerned about the lack of funding for non-point source pollution and monitoring of ground and surface waters of the region.

Water Quality Permitting

9. I don't think I have served on the board long to develop an opinion as to whether or not BMP's work better than numeric limits. Region 7 is a desert, receiving less than 1 inch of annual rainfall. Therefore, stormwater does not pose a serious threat to our groundwater. Generally, I agree with current law that requires a discharger to use a BMP. I think all parties should work collaboratively to ensure that we find the most effective way to meet our water quality requirements

Continued.

Ellen Way - Confirmation Questionnaire
WQCB, Colorado River Basin Region
Pg. 3 of 5

10. I think it would be impossible to have blanket numeric limits for the entire state and would even be difficult regionally. I support current law which requires discharges to use BMP's rather than numeric limits. Specific to Region 7, stormwater does not pose a serious threat to our water quality.

Enforcement of Water Quality Laws

11. Region 7 has recently reorganized its office team to form an enforcement unit, which has helped staff improve the timeliness of enforcement actions. Since my appointment, I have experienced a staff that is interested in working with dischargers to solve problems and protect water quality. We must respond to problems rapidly and progressively, we must also communicate clearly and work cooperatively since we are working for California's taxpayers.
As a board member, I receive copies of all enforcement orders and discussion ensues at board meetings. Our Executive Officer also provides us with a quarterly non-compliance report. Due to the progressive efforts of staff, we don't seem to have too many dischargers in non-compliance for any great length of time.

Water Quality Monitoring

12. Given the current financial situation in California, I don't see how we can assert the need for more money. I plan to learn more about our monitoring program and how it can be more robust without additional funding. Region 7 has two sources of drinking water, the Colorado River and groundwater. If California really wants to protect the Colorado River, we must do something about our most serious offender, the Country of Mexico.
13. As was previously stated, Region 7 is a desert and stormwater does not pose a serious threat to water quality. However, I am told that our board has (prior to my appointment) revised all of its stormwater permits to ensure compliance with SB 72.

Cleaning-up Impaired Waters

14. In researching this question, I learned that Region 7 has drafted TMDLs for 80% of all of the TMDLs listed in our 303(d) list; each will have come before the board by 2006. I think this demonstrates that we are on schedule. For example, the Regional Board has adopted silt TMDLs for the entire Imperial Valley to control water quality impacts from agricultural runoff. The compliance rate for this TMDL exceeds 95%. The TMDL Program was implemented by Imperial County Farm Bureau and they received a Governor's Environmental and Economic Development Award for 2004 in recognition of their success.
In my opinion, TMDLs are very difficult to develop because we lack sound scientific data to determine, without a doubt, where a pollutant originated and what kind of public threat it really poses.

Continued.

Ellen Way - Confirmation Questionnaire
 WQCB, Colorado River Basin Region
 Pg. 4 of 5

I have been told that the TMDL process is unsuitable for certain water quality problems such as the Salton Sea Watershed in our region. The Sea is a closed basin with its only viable water supply coming from agricultural runoff. Farmers would practically have to discharge distilled water into the Sea to keep salinity levels stable. Although the Sea is an important habitat for migrating birds, how much money are taxpayers really willing to invest in a body of water that is technically an agricultural drain, does not provide drinking water, and will be very expensive to clean-up and maintain?

15. I would test samples taken from the watershed. The challenge is in determining a load level that is realistic for the dischargers of the region while maintaining the quality of the watershed. And what is "quality" water? Some expect our public waters to be of "distilled" quality and would propose zero tolerance for a load of any kind. I believe we lack the scientific data to absolutely determine acceptable load levels.

I'm not sure who you are referring too when you ask if "other agencies" should be involved in implementing loads, however, in the case of the New River, I believe EPA has full responsibility for bringing Mexico into compliance with the TMDL.

New River Pollution

16. and 17. In 1982, the US and Mexico signed Treaty Minute No. 264, which required the elimination of all raw sewage and untreated industrial waste discharges into the New River by July 1982. Region 7 staff reports that the New River remains basically as polluted now as it was then. I believe the most important water quality issue facing the Region 7 board is Mexico's egregious disregard for this treaty. I have reviewed reams of letters, reports, meeting records etc... from regional staff begging our federal government to force Mexico into compliance. According to our most recent "observation tour" report more than 20 million gallons of raw sewage continues to be dumped daily into the New River from Mexico. Because we see this pollution problem as a federal issue, our current role is to urge, poke and prod the federal government into taking severe enforcement action. We must make progress at the border if any of our other TMDL work down river is to be effective. I think a retired Region 7 Executive Officer stated the problem clearly when he wrote, "If the New River flowed through San Francisco would it be getting the same lack of attention?" I wait with guarded optimism to see if Mexicali II achieves what has been promised.

Chromium 6

18. The Topock hexavalent Chromium plume lies within Region 7. It has been an informational issue at every board meeting since my appointment and I know that three Waste Discharge Requirements for clean-up were approved by the previous board. This issue is a high priority for board staff.

Continued.

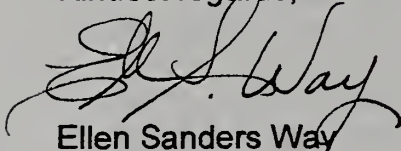
Ellen Way - Confirmation Questionnaire
WQCB, Colorado River Basin Region
Pg. 5 of 5

At a recent meeting, staff provided board members with a copy of the Ft. Mojave Tribe's suit and a recent Los Angeles Times article regarding the issue as part of the Executive Officers report. I attended one educational meeting with staff to learn more about the concerns of the Native American tribes regarding their sacred land and have determined that this issue is between the tribes and PG&E. The purview of the WQCB extends only to the water contamination issue. We are responsible for seeing that PG&E increases the extraction pumping rate and establishes hydraulic control not on where the treatment plant is located.

19. At this time the most likely remedy for removing the main part of the plume is to pump it out and treat it. Should other alternatives come before the board I will give them my full consideration.

I look forward to serving as a member of the Water Quality Control Board, Region 7 and will do so thoughtfully, ethically, and to the best of my ability. Thank you for considering my responses to the abovementioned questions.

Kindest regards,

A handwritten signature in black ink, appearing to read "Ellen Sanders Way", written in a cursive style.

Ellen Sanders Way
Board Member
WQCB – Colorado River Basin Region

CALIFORNIA LEGISLATURE

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SENATE RULES COMMITTEE

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DEPUTY EXECUTIVE OFFICERKEITH FELTE
DEPUTY EXECUTIVE OFFICERPAT WEBB
COMMITTEE ASSISTANT

June 16, 2005

Nancy Wright
60875 Fairview
Whitewater, CA 92282

Dear Ms. Wright:

The Senate Rules Committee will schedule a hearing on your confirmation as a member of the Water Quality Control Board, Colorado River Basin Region. Prior to the hearing, we would appreciate your written responses to the questions below. It has not yet been determined whether you will be asked to appear in person at a confirmation hearing or not be required to appear. Please respond by July 8, 2005.

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

State/Regional Board Roles

The issues addressed by regional water boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?
3. Do you have any suggestions on how they might better assist you?
4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you

know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?
6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?
7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?
8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency,

accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal storm water permit programs and Total Maximum Daily Load programs."

Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?
15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

New River Pollution

The New River has been called the most polluted river in the United States with raw sewage and industrial waste being discharged into the Mexican portion of the river. A new project, Mexicali II, will collect and treat 14 million gallons per day of raw sewage that is now discharged into the New River.

16. Please outline your board's role in addressing water quality issues such as sewage collection and wastewater treatment on the New River.
17. What progress has been made towards bi-national cooperation in restoring the New River? How will future progress impact the New River?

Chromium 6

A PG&E compressor station at Topock has contaminated groundwater with Chromium 6 or hexavalent chromium. Test wells have detected hexavalent chromium seventy feet from the Colorado River. As an interim measure a treatment plant is being considered for the area, but there are concerns from Native American tribes that it will be built on sacred land. Current studies for evaluation and selection of a final remedy are ongoing.

18. What is your board's involvement in the hexavalent chromium groundwater contamination near Topock? Has your board discussed the concerns of the Native American tribes concerning the building of the interim treatment facility on sacred land?

19. What do you see as the final remedy for the cleanup of this groundwater contamination?

Please send your written answers to these questions to Nettie Sabelhaus, Senate Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814, or you may fax your responses to (916) 445-0596. Thank you very much for your help.

Sincerely,



DON PERATA

DP:KW:dc

Nancy S. Wright
 Colorado River Basin Region, Region 7
 P.O. Box 580901
 North Palm Springs, CA 92258
 760 239 7071 Fax 760 231-0101

July 5, 2005

Senate Rules Committee
 Senator Don Perata, Chairman

RE: Regional Water Quality Control Board confirmation questionnaire

Goals:

1. To enhance and protect water quality including the de-listing of impaired 303(d) listed water bodies in our region. To ensure that the beneficial uses of surface and ground water are protected and maintained so that current and future generations can enjoy the beneficial uses of their waters. This can be accomplished through monitoring, implementation and enforcement and by bring all stakeholders to the table.

As an experienced board member I am looking forward to being a part of the process of the administrations efforts to streamline and organize the regional boards as to better serve the public' interests, and to make the Colorado River Basin Region a model for the rest of California.

State/Regional Board Roles:

2. Help received: New board member orientation by the OCC and EO, by receiving the current copies of the Porter-Cologne Water Quality Control Act, e-mails and EO monthly reports updating board members on current issues, newspaper clippings and staff reports at meetings. The WQCC meetings and the ability to attend conferences dealing with regulatory issues of the state are of great help in understanding the complex issues.

3. Suggestions: None at this time.

4. Conflict of Interest: I have been a board member of the Mission Springs Water District since 1988. I have been a board member of the regional board since 2000 (except from 11-04 to 12-05) and have taken the Ethics Course several times. The SWRCB's Conflict of Interest Code and my 700 Form are good ways of knowing if I have a possible conflict and if I am not sure I will ask the regional boards council.

Once during my tenure I have had to recuse myself.

Page 2

5. State and regional board relationship: Communication between the state and regional boards is a very important part of the process. Steps have already been taken by the state board to help in this process these steps are a good start but more coordination and accountability would be prudent. Streamlining administration functions could prove to be cost efficient and enhance accountability. To my knowledge our region has a good working relationship with the state board.

6. Operational efficiency: In my opinion there are two areas of operations that the regional boards could improve efficiency regarding grant administration procedures, the reporting process and invoice submission. My recommendations would be to have the regional board grant administrators focus their efforts toward quarterly project inspections, progress reporting, environmental, and engineering efforts and actually verifying that the physical construction is being performed. Accounting and internal auditing measures could be delegated to the State Controllers Office and /or the program analyst in Sacramento. Consistency is important for efficiency.

7. Budget allocations: The regional board members usually do not get involved with budget allocations they come from the state board. Each region has different priorities but the way the system is set up a region gets monies allocated for specific purposes and they can not transfer the money to another fund of higher priority, except in a few circumstances. When anything such as, budget allocations are on a regional board agenda then the public would have a chance to review them and make comments. State and regional board staff reports at board meetings and the SWRCB/RWQCB web-site can be very informative.

8. Adequate funding: Two areas that need more funding are monitoring of surface and ground water and the ability to create a more accurate data base.

Water Quality Permitting

9. Discharge permits/numeric limits: The climate, such as, annual rain fall and the type of pollution need to be considered on how discharge permits and numeric limits should be constructed.

10. Storm water permits: Due to the desert climate it has been our regions experience that BMP's at this time are adequate for implementing the storm water program.

Enforcement of Water Quality Laws:

11. An accurate data base and monitoring are very important for proper enforcement. Our region now has an enforcement unit which is in the process of streamlining our enforcement efforts.

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The board receives copies of Enforcement Orders by mail which is followed up by an EO report at the next meeting. Quarterly non-compliance reports are part of our board's agenda packets.

Water Quality Monitoring

12. Adequate monitoring: In order to make monitoring more robust we need more funding. Our region has the Colorado River and ground water basins which are used for drinking water. If we had more funds we could collect enough data from these sources to get a better picture of the seasonal quality of these waters year around and year after year.

13. SB 72: In the Colorado River Basin Region storm water is not a real threat to water quality but staff has revised all storm water permits to comply with SB72.

Cleaning up Impaired Waters

14. Staying on schedule: At our last board meeting staff reported that by 2006 they will have finished 80% of all the TMDL's listed on our regions 303(d) list. Our first step has been to involve and educate the dischargers and stakeholders and enforcement is a high priority.

15. Implementation and other agencies roles: Our first enforcement regulation is enrollment into the TMDL program the next enforcement step is monitoring tail water which will be in progress over the next couple of years. Imperial Irrigation District (IID) has a responsibility to enforce their regulations. The Imperial County Farm Bureau (ICFB) has stepped to the plate and has been a cornerstone in our process of developing the TMDL's and educating and walking farmers through the compliance process. We have to rely on data base from ICFB and IID which is not completely accurate, ACL's are sent to landlords (not farmers) and a TMDL non-compliance penalty of \$10,000.00 has been set. The silt TMDL compliance rate for the Imperial Valley exceeds 95% and we have seen a 30% decrease in silt in the New and Alamo Rivers, tributaries to the Salton Sea.

USEPA and International Boundary and Water Commission (IBWC) have a responsibility for cleaning up the New River at the International Boundary. The USEPA has been named one of the responsible parties in the pathogen TMDL for the New River but to date they are in non-compliance. Due to the regional boards persistence Secretary Alan Lloyd has recently designated the New River water quality at the International boundary an Environmental Justice pilot program. The state of Colorado should take some responsibility for being a big source of selenium in the Colorado River. It will take more than the Colorado River Basin Region to make these parties meet their responsibilities.

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New River Pollution

16. Boards role: The major source of pollution in the New River comes from Mexico and it is the responsibility of the USEPA and the IBWC to make sure it meets California standards as it comes into the state. The regional board has been actively involved with the cleanup of the river and for decades has monitored the river at the International Boundary, this data is very important in order to understand the water quality of the river as it enters California. The board's role is to regulate the water quality of the river to ensure that the beneficial uses of the New River in California are maintained by implementation and enforcement of NPDES and WDR permits and TMDL's.

17. Bi-national cooperation: Throughout the years the regional board has developed a good working and educational relationship with their counterparts and with the Mexican Federal Officials in the Mexicali Valley in Mexico. Regional board staff are a member of the Binational Technical Committee which meets monthly, we participate in monthly observational tours of the New River in Mexico with the IBWC. The USEPA has just recently reported to our board that Mexico is now sharing with us some water quality monitoring data of the New River in Mexico.

Mexico is about 30 years behind the US on environmental issues. Over the decades the river quality has improved but the river is still far from complying with California standards. When the Mexicali II WWTP comes on line that will help but a lot more needs to be addressed before the river is safe. Trash dumped along the river in Mexico is a serious water quality problem old infrastructure in Mexicali needs to be replaced, as old pipes break Mexico bypasses the raw sewage back into the New River. Mexicali's existing Zaragoza WWT lagoons are better than doing nothing but still the discharge from the lagoons into the river poses a serious health threat, industrial discharges, Ag and storm water runoff need to be addressed.

In my opinion the New River cleanup is not an engineering problem it is a political problem. In 1980, the United States and Mexico adopted Treaty Minute 264, which established water quality standards for the New River at the International Boundary but Mexico is still in violation of this treaty. Homeland Security measures could help cleanup the river due to the fact that the river is used to illegally enter the US because of the risk it poses to the US Border Patrol.

Chromium 6

18. Boards involvement in Topock: The Department of Toxic Substance Control is the lead agency in this cleanup. It is my understanding that the regional board has approved three WDR's which were adopted using an emergency CEQA exemption. I have received copies of these WDR's, a copy of the Fort Mojave Indian lawsuit, a newspaper article, e-mails and a report from the EO at our last meeting.

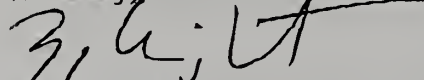
Page 5

19. Final remedy: As a regulatory issue, it is imperative that the cleanup continues in a timely manor, the existing pump and treat process seems to be doing some good. Regional board staff believes it is imperative to continue to increase the extraction pumping rate and establish hydraulic control especially since the river will continue to decrease in volume due to the summer months.

The Colorado River supplies drinking and ground water replenishment water for millions of people the preservation of the rivers quality should be a top priority and should involve all the stakeholders.

Thank you for the opportunity to answer these very thought filled questions.

Sincerely,



Nancy Wright

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July 8, 2005

Senator Don Perata
Senate Rules Committee
Attn: Nettie Sabelhaus, Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

RE: Lahontan Board Appointment

Dear Senator Perata:

Thank you for your letter of June 16, 2005 requesting a response to the questions below relating to my appointment to the Water Quality Control Board, Lahontan Region.

1. *Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?*

My goal is to balance the technical considerations before the regional board with the practical application of day to day public administration considerations. The regional board may comprehend the scientific nature of an issue, but it needs to balance it with the personnel, budgetary and legal considerations inherent with implementing public decisions in a transparent manner. I hope my 30-year elected career in local government and my educational background in public administration can offer the regional board a perspective that is fair and impartial to balance its technical deliberations.

2. *What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?*

The rapport between the regional board members seems to be good. Four of the current eight came on board after the first of the year, but the other more senior board members have done a good job of bringing the newer members up to speed on the issues currently before the board, and have been appreciative of input from the newer board members. The staff have been excellent in their presentations and explanation. Prior to the first meeting, the Executive Officer traveled to my home and gave me a thorough briefing on the operations of the office. He also provided me with several binders containing the Basin Plans, State Board and Regional Board policies, the Porter-Cologne Act, Resolution 92-49 and 2002-0040 regarding Enforcement Policy, the May 2004 Resolution on Nonpoint Source Pollution Enforcement and other pertinent documents to read and become familiar with. I have had no contact with the state board directly, since assuming the office. At my first meeting, the state board staff attorney assigned to the regional board conducted a briefing with the new board members,

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regarding conflicts of interest and other legal considerations relevant to the board members. That has been the extent of my contact with the state board.

3. Do you have any suggestions on how they might better assist you?

The regional staff have been very attentive to any concerns I have had as a board member. I think the state board and/or state board staff would be more interested in making sure new members of the regional board understand the complexity of the Porter-Cologne Act and the Resolutions referred to in the answer to Question #2.

4. What training have you received to help you understand when you might have a conflict of interest regarding an issue on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The training question was addressed in the answer to Question #2. The state board attorney assigned to the regional board, along with the Executive Officer are mindful of the potential conflicts various board members may have. They provide counsel as to appropriate conduct by a board member. Personally, after 30 years of sitting on elected boards at the local level, I am aware of potential conflicts and will discuss them with counsel prior to the agenda item. I am prepared to recuse myself, even if it is only the "appearance" of a conflict of interest. I have not had the need to do so in the three meetings I have attended since joining the regional board.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?

In the six months that I have been on the regional board, I would say it is none existent, but not unusual. On paper, it is similar to the relationship that exists in local government, between a county board of supervisors and a county planning commission. In that arrangement, the board of supervisors deal with policy, budgeting and staffing. The planning commission serves as the front line in reviewing land use applications that are not handled at a staff level. Their review is consistent with the policies and standards set by state law and board policy. Perhaps five percent of the planning commission actions will be appealed to the board of supervisors for further consideration or review. In many respects, the regional board functions like the planning commission, settling most applications not handled at a staff level. On occasion, some proposals will be appealed to the state board for further consideration, and they may overturn the regional board decision. The cumulative actions of the state board, along with the Act and policy regulations will guide future regional board considerations on new applications. That appears to be the primary method in which policies have evolved since the adoption of the Porter-Cologne Act.

6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?

It is my understanding that the regional boards do not fund grants, because grant making is the function of the state board. The regional board may administer grants, and in that capacity, work with contractors. One example that comes to mind is the Leviathan Mine project. If one looks close enough at contract administration, it could be determined to be

inefficient. Unfortunately, the complexity of contract law is caused by state administrative direction, legislative involvement or court decrees coming down from the state level. The regional board is left to try and make sense and/or satisfy requirements or limitations placed upon it. I think the California Performance Review was attempting to understand how the state can best reform how to conduct state business. I don't see how the regional board could streamline the process and at the same time satisfy the requirements imposed on it by a higher authority. This is an area that the Legislature and the Administration should look at for appropriate reforms.

7. *Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?*

As a local government official, I have always appreciated the value of "transparency in government" and State law basically requires localities to operate under intense public scrutiny. Unfortunately, state agencies don't seem to have the same level of transparency. It is easier for the general public to participate at the local level, as the late Speaker Tip O'Neill is famous for saying, "all politics are local." But when you have a region, like the Lahontan Region, that runs from the Oregon border to Lake Arrowhead, it's more difficult for the average citizen to participate or be involved. As a result, unless someone has business to bring before the regional board, the incentive to know what is happening at the regional level is relatively non-existent. Unlike "transparent" local governments, regional bodies are usually more "invisible." The authors of the Porter-Cologne Act were mindful of that fact. As a result, they required representation from county government, municipal government and at least one public-at-large member on each regional board. It has been the tradition, but not necessarily a requirement, that the county and city representatives be elected officials. While other board members represent categories that reflect "technical" expertise, the two local government representatives and the public member provide some expertise as to "the process" and hopefully work to make the regional boards less "invisible" and more "transparent." This is the biggest contribution I can make to serving on the regional board.

Unfortunately, I don't see the regional board playing a big role in the budgetary process other than accepting whatever allocation given to it by the state board. The regional board's primary role is to guide the priorities of the Executive Officer in allocating resources within the region. As you well know, the real budgetary power lies with the Legislature and the Governor, so even the state board is dependent upon what priorities the Administration and the Legislative leadership give to a program. In the six months I have served on the regional board, the board has had no discussion as to the operating budget or staffing. One suggestion would be to require regional boards to hold a public hearing on their budget, as county and cities are required to do. Given the size of the regions, I doubt you would have much public comment or input. At least the activities of the regional board would be more "transparent." I do know, from talking with the Executive Officer and his administrative staff, that the region has an operating budget of \$7.8 million and a staff of 57 positions. If the public desires to influence those numbers, I think they will have to do that at the state board level and/or the Administrative/Legislative level, not the regional level.

8. *Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?*

It is a big task. The question the regional board should focus on is, are we accomplishing all we can with the resources allocated to us? Unfortunately, I don't think that discussion is a

high priority in the limited time that the regional board meets. Generally, it appears to me that the regional board relies on the Executive Officer and his staff to struggle with the limitations that are imposed. In the short time that I have had to observe, that the regional staff appears to work hard to respond to the demands placed on their time and resources.

9. *Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency, accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on source of the pollution (e.g., point source versus nonpoint source pollution)?*

The concept of BMPs most likely came about because of the limitations on funding and staffing. Unless it is the intention of the State to literally shut down construction activity so that site specific criteria can be developed on each and every project, the state is forced to adopt "general perimeters" that become the basis for best management practices. It would be beneficial if there were site specific numeric values as standards that hold accountable the project proponents and the agencies charged with regulating them. My local level experience showed me that land use decisions are easier to enforce when you have numeric values as the criteria for evaluation; but it would be impractical or costly to use on every project. Alternative numeric standards could be used on larger projects, while using BMPs on smaller, routine applications. In regard to the nonpoint source issue, we need to give the policy guidelines adopted by the state board in May of 2004 time to be implemented and then evaluated as to their effectiveness. On the surface, numeric standards are going to be more difficult to apply to nonpoint sources cases.

10. *Please explain your views on whether storm water permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?*

First, we have to be practical. Unless an agency that has to deal with storm water has the power and ability to control weather, they are at a distinct disadvantage in dealing with the problem. I guess "they" can build a huge "dome" to cover "their" jurisdiction, which preclude storm water in the first place; or, they can install a costly collection system and route all waters collected because of a storm to a treatment facility, before it escapes to the watershed. Who gets to pay for it? The State? The agency? Or is it the cost of development? Do we stop all development until it is paid for? If it is to be the policy of the State to stop or slow down growth, then one way to assure that policy is implemented would be to impose numeric values on agencies that handle storm water.

Probably the single biggest illustration of this issue was presented recently at a regional board meeting. Lake Tahoe, the Jewel of the Sierra, is surrounded by state highways – half under the control of CalTrans and the other half under the control of NDOT. The highway is the last line of defense against nutrients entering the lake. They collect storm water and run-off from adjoining parcels under development. It becomes the responsibility of the state agency to treat any storm water before it enters the lake. A costly task. In 1998, a summit was held at Tahoe with President Clinton, the US Senators of both California and Nevada, congressional representatives of both California and Nevada, and the state political leadership of both California and Nevada. An ambitious program was mapped out and significant financial resources were pledged by the Federal Government and State Governments to aggressively address the issues affecting Lake Tahoe in a 10-year program. California committed to a ten year program of corrective actions by CalTrans to be completed by 2008. BMPs were identified

and the targets were set. At a recent briefing with the regional board, we learned from CalTrans that the original schedule that would have been implemented by 2008 is now delayed until 2012 or beyond. The primary reason – funding. Changes in political leadership also meant changes in priorities, and combined with the budgetary crisis of recent years, implementing the program – regardless if it was based on BMPs or numeric values – was not a reality. The question facing the regional board – do we take legal action against CalTrans? Or the State? Or the Legislature and Governor for failing to fund and implement the 1998 Summit Agreement? If we can't take aggressive action against the State of California, because of budget problems, is it fair to take against a local jurisdiction for failure to comply – also for budget problems handed down to them by a state budget adopted by the Legislature and Governor? Ultimately, do we put a moratorium on all construction in the Tahoe basin until the agencies that have responsibility to handle storm water run-off are able to comply and the budgetary crisis is resolved?

11. *Are there specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?*

The Hilmar case is definitely a wake-up call. I have not seen the Cal-EPA report, but its findings do not surprise me. My previous service on the Lahontan Board (1981-1984) showed me that aggressive enforcement is not always rewarded. Starting in 1983, with the new Deukmejian administration, I was continually informed by the new board appointees, that as an appointee of Gov. Jerry Brown my days were numbered. "The anti-growth reputation of the regional board, especially in the Tahoe basin, was going to change." It boils down to the philosophy of the Administration and the Legislature as to how aggressive the water quality laws are enforced.

12. *Can your board adequately monitor water quality within its current funding levels? What specific steps could your board make monitoring more robust?*

I don't know. With a budget of \$7.8 million and a staff of 57, covering a region that begins at the Oregon board and extending to Lake Arrowhead, meeting two-days – eight or nine times a year -- I would say we are stretching the limits. The regional board has to rely on the Executive Officer and a motivated staff to accomplish its purpose. In the short time I have been on the regional board, I have not been made aware of the working group created by AB 982 or the funding issues surrounding SWAMP. I would agree that monitoring is essential for collecting base data, so that the evaluation of remedial programs can be truly ascertained.

13. *SB 72 (Kuehl, 2001) requires standardized storm water monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of storm water and storm water control measures. How is your board complying with SB 72 to standardize storm water monitoring?*

I am not familiar with SB 72, and in the short time I have been on the regional board, have not had the opportunity to evaluate how our region is complying with the requirements of SB 72. Given the importance of the issue, especially how it relates to the Tahoe basin, my impression is staff has worked hard to assure regional compliance. As described above in Question #10, at a recent board meeting a lengthy presentation was made by regional staff and representatives of CalTrans, regarding its efforts to deal with storm water runoff; including cooperative action with Nevada Department of Transportation. I was impressed by what CalTrans wanted to do and what regional staff expected them to do. I was disappointed to learn the extent CalTrans is limited by the Governor and the Legislature in diverting significant transportation funding to stop the hemorrhaging in the state budget. Once again, the issue of funding underlies the lack

of accomplishments of not only the regional board, but also the state agency responsible for the problem, regardless if it was based on BMPs or numeric values.

14. *What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?*

Again, as a new board member, it would be presumptive for me to outline a "Chapman Plan." It will be important, as a new member, to ascertain exactly how our region is performing and request from regional staff their plan to make sure that the Lahontan Region is meeting the standards expected under the law within the resources allocated to it by the state board, the Administration and the Legislature.

15. *What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?*

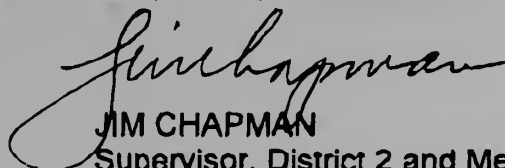
I think the concept of the TMDLs is a great improvement over the what the Regional Board was considering 25 years ago when I last served. It is imperative that all agencies or parties affected collaborate in the solution. In most cases, there are shared responsibilities and it is inherent that all affected parties work together to ultimately achieve the solutions desired. TMDLs are an effective method to accomplish this task. An example that I am most familiar with is in my back yard in Lassen County. Eagle Lake is 14 miles northwest of Susanville and is in the North Lahontan Basin. One third of the lake basin is in the jurisdiction of the US Forest Service, another third the Bureau of Land Management and the remain third are private lands under the jurisdiction of Lassen County. The lake itself is managed by the State Lands Commission. If all agencies but one managed its interest properly, the one agency failing to take appropriate action would negate the efforts of all the other agencies. In the mid-70s all the parties agreed to form the Eagle Lake Interagency Board, and in a collaborative fashion the agencies have blended its management of the lake basin in a fashion similar to the concept of TMDLs today. The result of this cooperative approach has brought about a significant to the lake. The cows grazing along the shore line were moved; the regional board, during my chairmanship in 1984, ordered the sewerling of the residential developments existing at the lake; the forest service changed its fire suppression strategies, especially its use of retardants that introduced heavy nutrients to the lake in previous years; the county has placed stiff restrictions on new development and imposed strict new standards on pre-existing development that were in the process of build-out. The result of these and other actions have stabilized and improved the fragile nature of the lake. The model works.

16. *What is your board doing to reduce the siltation and nutrient buildup in Lake Tahoe? How is your board working with the State of Nevada? What is your timetable?*

The regional board received an update at the June meeting of the progress on the EPA grant and the cooperative effort known as Pathway 2007. The report included steps being taken to Update the TRPA Regional Plan, as well as the Tahoe Basin Management Unit (Forest Service) Land Management Plan. In March, we had the presentation from CalTrans and their cooperative efforts with NDOT. Progress is being made to establish the TMDLs and I am excited by the cooperative effort that regional staff is participating in, and like the Eagle Lake experience described in the answer to Question #15, I would expect tangible results can be achieved.

I hope that you find the above responses to your questions are satisfactory. If I can be of any further assistance, please feel free to contact me at any time.

Respectfully,

A handwritten signature in cursive script, appearing to read "Jim Chapman".

JIM CHAPMAN

Supervisor, District 2 and Member,
Lahontan Regional Water Quality Control Board

The first part of the paper is devoted to a general discussion of the problem of the existence of a solution of the system of equations (1) for arbitrary values of the parameters α and β . It is shown that the system (1) has a solution for arbitrary values of the parameters α and β if and only if the condition $\alpha + \beta = 1$ is satisfied. In this case the solution is unique and is given by the formula

$$u(x, y) = \frac{1}{2\pi} \int_0^{2\pi} \int_0^{2\pi} f(\xi, \eta) d\xi d\eta + \frac{1}{2\pi} \int_0^{2\pi} \int_0^{2\pi} g(\xi, \eta) d\xi d\eta.$$

The second part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The third part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The fourth part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The fifth part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The sixth part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The seventh part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The eighth part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The ninth part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

The tenth part of the paper is devoted to a study of the properties of the solution of the system (1) for arbitrary values of the parameters α and β . It is shown that the solution of the system (1) is continuous and has a unique continuation property. It is also shown that the solution of the system (1) is bounded and has a unique continuation property.

Keith Dyas
P.O. Box 687
Rosamond, CA 93560

June 30, 2005

The Honorable Don Perata
Chairman, Senate Rules Committee
Room 420, State Capitol
Sacramento, CA 95814-4900

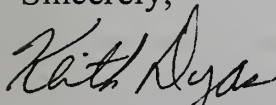
Dear Senator Perata and Rules Committee Members,

Please find enclosed my response to the questions posed by the Senate Rules Committee, as presented in your letter dated June 16, 2005. For clarity, my response includes the original questions, followed by my respective answers in bold type.

I was appointed, subject to Senate confirmation, to the Lahontan Regional Water Quality Board in January of this year and have since attended each of its public board meetings. The duties of a board member are demanding, but very rewarding. I have been working diligently to become an effective and productive member of this board that is responsible for protecting our valuable water resources, for present and future generations.

The questions which you have presented are thought provoking and instructive. I have enjoyed the response effort and the insight gained by the process. Thank you for the opportunity to share thoughts on the exciting role I hope to serve on this vital regional board. If you need any further information, please feel free to contact me at (661) 277-1413.

Sincerely,


Keith Dyas

JUL 08 2005

Enc: Response to Rules Committee

SENATE RULES COMMITTEE QUESTIONS (with responses from Keith Dyas in **bold print**)

Statement of Goals

1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the board?

By the end of my tenure as a Lahontan Regional Water Quality Control Board member (Sep. 30, 2008), I hope to have accomplished the following:

- A. Stabilize Lake Tahoe transparency, reversing the longstanding trend of transparency loss.**
- B. Implement remedial action for elimination of acid mine drainage (AMD) to Leviathan Creek.**
- C. Eliminate all wastewater discharges onto Rosamond lakebed, in order to maximize the use of the lakebed for airfield operations by Edwards Air Force Base.**
- D. Modify the Lahontan Basin Plan waste discharge prohibitions to include provisions for protection of additional prime groundwater recharge areas of the arid basins.**
- E. Terminate all land spreading of wastewater that is treated to less than a tertiary level.**
- F. Implement cleanup action of groundwater nitrate plume at City of Palmdale.**
- G. Develop improved process for regulation of groundwater recharge with highly treated wastewater.**
- H. Develop specific water quality objectives for all major closed basin groundwaters within Lahontan.**

State/Regional Board Roles

The issues addressed by regional boards are often scientifically complex. Preparation for hearings can be time consuming for board members, yet these are considered part-time positions.

2. What help do you receive from the state board, your regional board members, and staff to assist you in better understanding some of the complex issues before you?

While it is true that my role as a new board member is full of challenges, and represents a significant learning experience in many respects, environmental science is not one of them. Fortunately, my background (M.S. in mechanical engineering; 11 years environmental management experience for the federal government) has provided me a good foundation for the technical challenges facing board members. However, whenever I do happen to need additional information to study a board issue, the Lahontan staff and fellow board members are eager to provide prompt, effective assistance.

JUL 08 2005

3. Do you have any suggestions on how they might better assist you?

Because of the fine support I have been provided, I have no suggestions for improvement. However, as I mature as a board member, I hope to make better use of the available assistance, by refining my questions and focusing in on the critical points.

4. What training have you received to help you better understand when you might have a conflict of interest on your board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this board?

The conflict of interest training that I have received includes the following:

- A. Video tape presentation entitled "Ethics Orientation for State Officials", introduced by Attorney General Lockyer, including a written summary of changes in law subsequent to production of the video.**
- B. State Water Resources Control Board/Regional Water Quality Control Boards Supplemental Ethics Training for Designated Employees**
- C. Code of Ethical Standards for gubernatorial appointees.**
- D. State Water Resources Control Board/Regional Water Quality Control Boards Incompatible Activities Statement.**
- E. California Code of Judicial Ethics.**
- F. Personal conflict of interest briefings by State Board attorneys assigned to Lahontan, and by the Lahontan Executive Officer.**

In general, the above training elements provide guidance on most situations which would require me to recuse myself from voting on a particular issue. For circumstances in which I am unsure, I consult with the board attorney for clarification. Furthermore, my personal guiding principal in all circumstances is to willingly recuse or disqualify myself whenever my impartiality might be questioned, and whenever my participation in board activity might have the appearance of impropriety.

Yes. I have recused myself from board activity that involved my employer, Edwards AFB.

The state and regional board structure has been criticized by both industry and environmental groups in recent years for being cumbersome and lacking accountability, efficiency and transparency. Both sides note that major policy issues often are decided "on the back end" by appeal to the state board instead of through a consistent statewide policy established by the state board and implemented by the regional boards.

5. What is your view of the relationship between the state board and your regional board? Could coordination and/or accountability be improved? If so, how?

Basically, I believe that the relationship between the State and regional boards should facilitate coordination of respective activities to achieve a unified and effective water quality control program for California, as specified in the Porter-Cologne Water Quality Control Act. Additionally, the State Board sets statewide policy for the implementation of state and federal laws and regulations. The statewide policy must be incorporated into the Water Quality Control Plans adopted and implemented by the regional boards.

Base upon my limited time on the regional board, it is my opinion that the relationship defined above is respected and in effect between Lahontan and the State Board. Furthermore, I have a strong sense that our staff and board willingly recognize the State Board authority.

While I'm certain that there is always room for improvement of coordination and accountability, I have not yet been made aware of any specific deficiencies. However, I would speculate that improvement could be attained through increased levels of communication. In the future, I will be watching for opportunities to improve coordination and accountability, and I will continue to be very receptive to suggestions from any source.

6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?

As in my response to the previous question, my lack of significant board experience prevents me being able to provide specific examples of areas of operation, but in general, I would suggest that every process could benefit from increased efficiency, including grant and contract procedures.

Although I am not currently able to offer recommendations for efficiency improvements, I will discuss the subject with staff and other board members. As I observe opportunities for improvement, such as grant and contract procedures, I will take action to implement them. I welcome all suggestions to improve operational efficiencies.

7. Are there specific areas of operations that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

I believe that all areas of operation that involve general decision making and that require discretionary actions would benefit from increased public scrutiny, especially budget allocations. I have requested that the budgetary process (staff recommendations for applying the limited funding authorization) be presented to the board in public meetings, in order to promote public comment.

I would support many steps to increase public scrutiny and participation in other Lahontan operations as well, including improved public notification efforts, additional public hearings, public educational outreach programs, wider distribution of review documents in order to maximize public comment opportunities, etc. I believe that Lahontan must go beyond the minimum statutory requirements for public notifications, and furthermore, that special effort should be made to reach the members of the public who will be most directly affected by a particular action. Because of the vast geographical size of the Lahontan region, effective public involvement will require multiple public meetings to reach optimum levels of the region's population.

I am pleased to report that Lahontan does rotate its monthly public meeting locations for increased public access and participation. Also, our regional board tailors each meeting agenda to address items of greatest public interest in that specific meeting location.

8. Do you believe your regional board is adequately funded to enforce the state and federal laws you are charged with enforcing?

Unfortunately, I don't believe that we are adequately funded to enforce all applicable laws. In fact, we probably receive less than half of what is needed for our operations in general. Since regional boards are charged with more functions and responsibilities than enforcement alone (such as water quality monitoring, establishing water quality standards, applying standards in permitting, etc), the process of allocating the limited funding becomes a difficult "balancing" and decision-making effort.

Water Quality Permitting

The federal and state clean water acts require permits to discharge pollutants from stormwater into the waters of the state. In the past, these permits have imposed "best management practices" (BMP's) on dischargers under the assumption that the use of those practices will result in water quality improvements.

However, there is increasing evidence that BMP's do not adequately protect water quality. Some experts have suggested that regulations governing permits be revised to require enforceable, numeric limits on pollutants discharged into waters, as is required of

other sources of pollution. Supporters of numeric limits state these limits would make water quality permits more easily enforceable and transparent, and would be more efficient because permit holders could choose how to comply.

One recent survey of sampling results for industrial facilities discharging stormwater in the Los Angeles area found that between 95% and 99% of permittees operating under BMP's exceeded water quality standards for copper, lead and zinc. This compares to the 90% to 99% compliance rate for facilities operating under numeric effluent limits for stormwater discharges.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency, accountability and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus nonpoint source pollution)?

Discharge permits should be constructed to be simple, concise, objective, unambiguous and wherever possible, should contain numeric limits. Properly designed permits are effective tools that are readily enforceable, and result in improved compliance, reduced demands on limited enforcement resources, and ultimately produce improved water quality.

Yes, I believe that numeric limits in permits do indeed provide more consistency, accountability and efficiency than permits that depend on BMPs, because numeric limits reduce (and sometimes eliminate) subjectivity in determining compliance.

I believe that all point source discharge permits should contain numeric limits. Nonpoint discharge permits should also contain numeric limits wherever practical.

10. Please explain your views on whether stormwater permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

As I have indicated in my answer to the previous question, I believe that the most effective discharge permits are those which are most objective, and which use hard, numeric limits. Therefore, stormwater permits should also make maximum use of numeric limits. In some cases, BMPs might be used in conjunction with numeric limits. However, whenever numeric limits are not practical, the public deserves the right to review and comment on all BMPs proposed before permits are issued.

Some factors which might preclude the use of numeric limits in stormwater permits are: site topography, complexity of drainage system, stormwater flow variability, the nature of storm patterns, lack of channelized flow (sheet flow), upstream contributors of contaminants, practicality of obtaining representative effluent samples, etc.

Enforcement of Water Quality Laws

In April of this year, the office of the Secretary of Cal-EPA reported to the Legislature on environmental enforcement and asserted that the state and regional water boards are among the worst agencies in enforcing the law. The report stated that the boards were very slow to enforce clean water laws, almost never seek criminal penalties for serious violations, and generally do not aggressively pursue violators.

Recent press reports documented years of illegal waste disposal by Hilmar Cheese Company in the Central Valley without any meaningful enforcement action from its regional board.

11. Are there any specific ways in which your regional board could improve on the manner in which it enforces water quality laws? How does your board monitor the staff's enforcement practices?

I am a proponent of aggressive, persistent enforcement of water quality laws. However, I also believe that most dischargers are making sincere attempts to comply with water quality laws. I believe that we should recognize and assist those dischargers through education, partnerships, and most of all through the establishment of clear, concise rules, regulations and permits. As we continue to improve relationships with industry and the public in general, compliance will improve, which in turn will reduce demands on enforcement resources.

For the small percentage of dischargers who understand the regulatory requirements, but intentionally choose to circumvent them, we must focus our monitoring and enforcement resources in a rigorous, vigilant and well-documented path toward eventual compliance, within the conventional workings of the established system.

As regional board members, we are responsible for ensuring strong enforcement practices through oversight of staff efforts, which are presented in project-specific reports, in the Quarterly Violations Report and in the Executive Officer's report. Our board establishes policy, provides guidance, and when necessary, specific direction to staff at decision points of enforcement actions. We are also aware of the critical requirement for patiently and methodically tracking the enforcement process to conclusion. In addition to our board's authority and responsibility to monitor and direct staff enforcement practices, we also are responsible for providing staff with the resources necessary for effective enforcement. This effort involves the difficult task of balancing the various demands to match the limited resources available.

Water Quality Monitoring

Water quality monitoring provides the basic data necessary to determine the health of state waters and to establish priorities needed to improve water quality.

Several years ago, the Legislature set up a working group comprised of regulated industries and environmental community leaders in AB 982 (Ducheny) to make recommendations with regard to the state's programs to monitor water quality and to identify and clean up severely polluted (impaired) waters.

The group sent joint letters advocating adequate funds for the state's Surface Water Ambient Monitoring Program (SWAMP), stating that such funds are "critical to implementing the state's other water quality programs effectively, and that they will more than pay off this investment in terms of future dollars spent more effectively on restoration and pollution prevention."

These and other parties assert that the state's water quality monitoring program is not funded at a level that would allow investigation of many known or suspected problem sites, tracking of the health of cleaner sites, or investigation of the health of the many sites about which nothing is known.

12. Can your board adequately monitor water quality within its current funding levels? What specific steps could your board take to make monitoring more robust?

Our staff does an admirable job of monitoring with the available funding of \$300,000 per year. Unfortunately, this amount is inadequate for the huge geographical region of Lahontan, with over 3,000 miles of streams and over 700 lakes. Furthermore, except for Lake Tahoe, our rural region does not benefit from having other entities which monitor receiving water bodies, as is done in urbanized regions such as San Francisco and Los Angeles.

Specific steps which our board could take to improve the monitoring effort would all involve acquisition of additional funding. One concept would be to allocate some of the monitoring expenses to more entities, in addition to dischargers. In other words, we as a society, could begin to discuss sharing the cost of monitoring/protecting among all of the parties that benefit from the use of the water bodies, instead of relying solely upon the dischargers.

13. SB 72 (Kuehl, 2001) requires standardized stormwater monitoring and reporting for municipal and industrial stormwater programs in order to better track the impacts of stormwater and stormwater control measures. How is your board complying with SB 72 to standardize stormwater monitoring?

The State Board has distributed for review, an internal draft of the "Statewide Policy for Monitoring of Storm Water Discharges from Medium and Large Municipal Separate Storm Water Systems", in accordance with SB 72. Lahontan has reviewed the document and provided comments to the State Board. We are now awaiting release of the external draft for general public review. Once the document is finalized and adopted by the State Board, Lahontan will implement, and comply with the standardization of stormwater monitoring.

Cleaning up Impaired Waters

Governor Schwarzenegger stated in his Environmental Action Plan that his Administration will "fully implement existing water quality programs, such as municipal stormwater permit programs and Total Maximum Daily Load programs." Yet, regional water boards lag far behind their adopted schedules for cleaning up impaired waters. Existing monitoring programs make it difficult to identify other waters that may be impaired.

14. What specific steps do you support to get your regional board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

It is true that existing monitoring programs make it difficult to identify impaired water bodies, especially when the regional board is also under funded for operations in general.

The principal reason that we are behind schedule is that our board has chosen to develop Total Maximum Daily Loads (TMDLs) through cooperative involvement of all stakeholders, instead of simply unilaterally imposing TMDLs. Even though our chosen course is slow and deliberate initially, we feel that the additional time and effort invested up front, will pay dividends in the future through avoidance of expensive, contentious and time-consuming disputes upon implementation.

Primarily, I would support the following steps to regain schedule:

- A. Prioritize the effort and focus on the water bodies for which existing data would suggest an impaired waters designation.**
- B. Seek additional federal funding for the process (at the risk of losing other Clean Water Act funding for NPDES).**

15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

The steps which I would take to implement would simply be to incorporate the TMDLs into our Basin Plan (as Basin Plan amendments) and to incorporate them into the waste discharge requirements within the conventional permitting process.

Yes. The other agencies that have a role in implementation include: Tahoe Regional Planning Agency, SWRCB, California Department of Forestry, Caltrans, State of Nevada, California Fish and Game, local air pollution control districts, U.S. EPA, U.S. Forest Service, city and county land use planning authorities, etc.

I would expect that we could ensure that they meet this responsibility through: Joint Powers Agreements, Memorandums of Understanding, formal contracts, permitting and monitoring, partnerships, legislation, formation of new coalitions and alliances, etc.

Lake Tahoe

The Lahontan Regional Water Quality Control Board is responsible for the water quality of Lake Tahoe, regulating operations such as stormwater treatment, timber harvest, water quality standards, dredging and cattle grazing. The board and the Nevada Department of Environmental Protection are jointly working to develop the Lake Tahoe Total Maximum Daily Loads (TMDLs) and associated water quality restoration plan to restore and protect Lake Tahoe's clarity. In November 2004 the state board awarded \$1.1 million from the federal EPA to help develop these TMDLs.

16. What is your board doing to reduce the siltation and nutrient buildup in Lake Tahoe? How is your board working with the State of Nevada? What is your timetable?


The Lahontan board recognizes the unique value of Lake Tahoe, and the awesome responsibility of protecting this state and national treasure. Consequently, the board has devoted much of its resources and Basin Plan provisions to the effort of protecting and restoring the lake. The Basin Plan contains strong prohibitions on waste discharges to the lake and its tributaries, as well as their respective 100-year flood plains. Such prohibitions are the harshest within the Lahontan region, and include 14 specific prohibitions and 4 general regionwide prohibitions. In fact, the discharge of domestic sewage (treated or untreated), garbage, solid waste and even soil are prohibited. Under a strict but necessary provision, sewage must be exported from the Lake Tahoe Basin. These stringent prohibitions are designed to reduce siltation and nutrient buildup in the lake. Our Basin Plan also incorporates the Nondegradation Objective, acknowledging the requirement of maintaining an even higher water quality in Lake Tahoe than would otherwise be established in water quality objectives.

Because of the fact that Lake Tahoe lies on a state boundary line, Lahontan's efforts to protect the lake must be closely coordinated with our partner, the State of Nevada. This coordination is accomplished directly with the Nevada Division of Environmental Protection (NDEP). Lahontan and NDEP are meeting monthly to develop the Lake Tahoe TMDL.

Lahontan is also working with the State of Nevada indirectly through the bistate Tahoe Regional Planning Agency (TRPA), which was established by Congress. Through the TRPA, the State of Nevada has contributed to the development of the Water Quality Management Plan for the Lake Tahoe Region (TRPA 1988). The appropriate provisions of this plan have been incorporated into the Lahontan Basin Plan. Our regional board has also worked with the State of Nevada through a 1994 Memorandum of Understanding with the TRPA, which increases coordination and reduces duplication of effort. Additionally, the Lahontan Executive Officer serves with Nevada officials on the TRPA Advisory Planning Commission.

The timetable for the joint development of the Lake Tahoe TMDL calls for completion of the Technical TMDL by January 2006 and adoption of the Final TMDL (including implementation plan) by fiscal year 2007/08.

Respectfully submitted,


Keith Dyas

City of Lancaster

44933 Fern Avenue
Lancaster, California 93534-2461
661-723-6000



July 21, 2005

Frank C. Roberts
Mayor

Bishop Henry W. Hearn
Vice Mayor

Jim Jeffra
Council Member

Ed Sileo
Council Member

Andrew D. Visokey
Council Member

Robert S. LaSala
City Manager

Nettie Sabelhaus

Senate Rules Committee Appointments Director
State Capitol, Room 420
Sacramento, CA 95814

Dear Ms. Sabelhaus:

Thank you very much for talking with me on Monday, July 18. Because of some unforeseen family emergencies, I was unable to respond with the information requested by July 8. I hope this information will still be considered to allow me to serve again on the Lahontan Regional Water Board.

I served on this Board two terms previously, in the late 1970's to mid 1980's. During that time, some of the projects that were most pressing were the Tahoe Keys and Leviathan Mines, along with many other very critical areas of concern to clean up and keep California waters safe and to correct areas that were damaged by dischargers as well as natural causes.

You will find enclosed a brief biography for me along with my responses to the questions of the Senate Rules Committee. Please let me know if you need anything further.

Sincerely,

BISHOP HENRY W. HEARNS
Vice Mayor

HWH:tsc

JUL 22 2005



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1. Please provide us with a brief statement of your goals. What do you hope to accomplish during your tenure as member of the Board?

One of the goals that I would like to help accomplish would be to build a better relationship between the Regional Board and the community it serves. I believe that once we set the direction and gain buy-in by the dischargers, we will be far more successful than in filing law suits. I am confident that I will be able to help create a better working relationship within the Board and community in all areas because I consider myself to be a team player and a bridge builder.

2. What help do you receive from the State Board, your Regional Board members, and staff to assist you in better understanding some of the complex issues before you?

I believe we have a very fine staff, led by Harold Singer, and a real asset in our attorney. Our Board members are very congenial and are willing to take the time to discuss issues appropriately. I am very pleased to be able to serve as a part of this wonderful group.

3. Do you have any suggestions on how they might better assist you?

No. I am very pleased with things as they stand.

4. What training have you received to help you better understand when you might have a conflict of interest regarding an issue on your Board's agenda? How do you know when to recuse yourself from voting on an issue? Have you done so since being appointed to this Board?

Prior to coming to the very first meeting, I was given a lengthy orientation by the State Board Attorney on the area of conflict of interest voting. As Vice Mayor of the City of Lancaster, I am familiar with conflict of interest voting. Yes, I have had to abstain from voting on issues involving my City.

5. What is your view of the relationship between the State Board and our Regional Board? Could coordination and/or accountability be improved? If so, how?

Yes. I believe that the State Board and the Regional Board could make improvements by working more closely together and spending additional time in building our relationship so that the trust between us is strengthened.

6. Are there specific areas of operation that you think would benefit from increased efficiency? For example, grantees and contractees with the regional boards have long asserted that the boards' grant and contract procedures are inefficient. Do you have any recommendations for improving efficiency in these or other operations at the regional boards?

I will be in a better position to respond to this question after I have been on the Board for a few more months. Many things have changed since I was on the Board in the late 70's and early 80's. Therefore, I would like the opportunity to be on the Board awhile longer before offering suggestions on how to improve.

7. Are there specific areas of operation that you think would benefit from increased public scrutiny, such as budget allocations? What steps do you support to increase public review of operations?

As I mentioned in response #1, I recognize the importance of building a better relationship and becoming partners with the dischargers to solve problems. I think that we would gain their buy-in by allowing the public or dischargers to know where we are heading. By better understanding projects, we will be able to do a better job of keeping our water safe.

8. Do you believe your Regional Board is adequately funded to enforce the state and federal laws you are charged with enforcing?

At this point and with my present limited knowledge of the overall budget, I think we are under budgeted for staffing, but I would like the opportunity to answer this question more carefully at a later date.

9. Please discuss your views on how discharge permits should be constructed to ensure that waters receiving the discharges remain clean enough for other beneficial uses. Would numeric limits in permits provide more consistency, accountability, and efficiency than permits that rely on BMP's? Is there a difference depending on the source of the pollution (e.g., point source versus non-point source pollution)?

I believe that it is incumbent upon our staff to know the point source, non-point source, origin and background, stream level of pollution, and the use of the water that is in the receiving stream. When all of this is known and if numeric values can be placed, it is in my opinion the best way to go. However, if this information is not readily known then BMP coupled with experienced staff should be used.

10. Please explain your views on whether storm water permits should include numeric limits. What factors should be taken into account in determining whether or not to include numeric limits?

As I stated in the previous response, I believe that when numeric values can be placed they should be, whether it is for point source, non-point source, or storm water. The factors that should be taken into account are several: receiving waters, storm waters, quantities of discharge, and use of the water after the discharge.

11. Are there specific ways in which your Regional Board could improve on the manner in which it enforces water quality laws? How does your Board monitor the staff's enforcement practices?

We have a wonderful Board and staff and they are doing a fine job at present. However, if more staff were provided to cover the very large area falling under Lahontan's sphere of responsibility, there would be more eyes keeping watch and it would be more difficult for dischargers to be lax in meeting the standards set by staff and Board. Based on the presentations I have heard given by our staff, I am extremely impressed with their ability to enforce water quality laws. At present, our Board does site visits to look at monitoring systems and to gain understanding of what is required.

12. Can your Board adequately monitor water quality within its current funding levels? What specific steps could your Board take to make monitoring more robust?

This question reflects on my response to #8. I believe that additional staffing would provide more robust monitoring and a better look at all of the discharges that we are expected to monitor.

13. SB 72 (Kuehl, 2001) requires standardized storm water monitoring and reporting for municipal and industrial storm water programs in order to better track the impacts of storm water and storm water control measures. How is your Board complying with SB 72 to standardize storm water monitoring?

I believe that our Board, working with our staff and with the Water Resources Board, is making every effort to comply with SB 72. I intend to become more familiar with the requirements of SB 72 as it relates to storm water and would like to reserve the opportunity to offer suggestions at a later date.

14. What specific steps do you support to get your Regional Board on schedule in identifying impaired waters and developing pollution loads that will lead to expeditious cleanup?

I believe that a special task force should be established to look at all aspects of storm water pollution and to evaluate their findings along with the previously established schedule. They could then recommend how we can comply with that schedule.

15. What steps would you take to implement identified pollution loads? Do you think other agencies have a role in implementing these loads? If so, how would you ensure that they meet this responsibility?

As I mentioned, I believe a special task force should review the identified pollution loads and determine how to expedite measures in order to clean up the affected streams as quickly as possible. I do not believe that we, as Board Members, would have the time needed to totally examine sites and all the other requirements that would be necessary to plot out a clear path. However, we can give directions to a task force to do site visits and review for compliance. I also think that other agencies, including the Solid Waste Management Board, should be involved.

16. What is your Board doing to reduce the siltation and nutrient buildup in Lake Tahoe? How is your Board working with the State of Nevada? What is your timetable?

After review of materials and discussion with staff, I discovered we have an ongoing regulatory program where we review construction projects and ensure pollutants (primarily sediment) do not reach Lake Tahoe. We also require storm water treatment and erosion control measures. We review and comment on environmental documents and project plans, issue permits, conduct inspections and take enforcement actions where appropriate to achieve compliance. Our regulatory actions take place primarily under the federal storm water program. We also take actions using waste discharge requirements, water quality certification and the non-point source program (primarily for grazing and timber activities). We also respond to spills and require cleanup actions.

We are undertaking a huge scientific effort to determine the sources of sediment, nitrogen and phosphorus to Lake Tahoe as part of the Lake Tahoe TMDL (Total Maximum Daily Load) program. We will be identifying the amount of pollutant reductions needed to improve the lake's clarity back to the 1970's level. We are working with several agencies in Nevada and California and with a large, diverse public stakeholder group to identify water quality management strategies to meet the necessary reductions. This interagency and public collaborative process is entitled "Pathway 2007." The Tahoe Regional Planning Agency and the Lake Tahoe Basin Management Unit will adopt new 20-year implementation plans in 2007. The Water Board and the State of Nevada will incorporate these plans and strategies into the TMDL adopted for Lake Tahoe.

Susan Van Dam

Senate Rules Committee

I am a new member of the Water quality Control Board, Lahontan Region as of January 2005. This is a new experience for me, I have never been on a board before. Some questions I can not answer because they have not been brought up before the board. I am willing and eager to learn new issues and items I have not thought about before.

My goals would be to provide a balanced perspective between the needs of the agriculture industry and water quality objectives of the Regional Board. I would want to be sure water quality is guaranteed for future users.

The Regional Board has a very qualified staff in the Victorville and Tahoe offices. They give detailed reports at board meetings about the issues relevant to that board meeting.

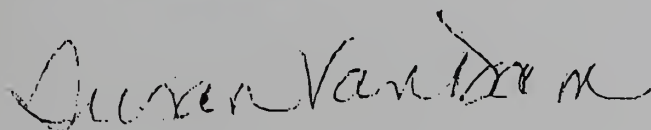
I would like to have informal meetings regarding more complex issues.

The board's legal staff has informed me of conflict of interest issues. If there are any questions at a board meeting, I can ask them. I have not had to recuse myself from any issues thus far.

At our last meeting a member of the State Board was present. It is my understanding that a member will be present at future meetings. I would hope they could give a brief report on what is happening at the State Board level. We just received a budget report. I would hope this is money wisely used and I leave it to the experts to appropriately use it and delegate.

These are all new issues for me to deal with. I would need more time to study and evaluate the issues. This is a learning process for me. I understand it takes a very long time for all processes to take place. There are many time frames for enforcements. They should be dealt with immediately. I'm sure as is with many businesses there usually isn't enough staff to check on all the issues at hand. I think public education is something that is a great need. Let the public know what is going on by tv ads, community forums, etc.

Unable to get a hold of someone to ask boards positions on the matters you asked about-vacations scheduled.



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23

HEARING
SENATE RULES COMMITTEE
STATE OF CALIFORNIA



STATE CAPITOL
ROOM 113
SACRAMENTO, CALIFORNIA

THURSDAY, AUGUST 25, 2005
12:28 P.M.

1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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4
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6 HEARING

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8
9
10 STATE CAPITOL

11 ROOM 113

12 SACRAMENTO, CALIFORNIA

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15 THURSDAY, AUGUST 25, 2005

16 12:28 P.M.

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24 Reported by:

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26 Evelyn J. Mizak
27 Shorthand Reporter
28



APPEARANCESMEMBERS PRESENT

SENATOR DON PERATA, Chair

SENATOR JIM BATTIN, Vice Chair

SENATOR ROY ASHBURN

SENATOR DEBRA BOWEN

SENATOR GILBERT CEDILLO

STAFF PRESENT

GREG SCHMIDT, Executive Officer

PAT WEBB, Committee Secretary

NETTIE SABELHAUS, Consultant on Governor's Appointments

BILL BAILEY, Consultant to SENATOR BATTIN

CHRIS BURNS, Consultant to SENATOR ASHBURN

EVAN GOLDBERG, Consultant to DEBRA BOWEN

DAN SAVAGE, Consultant to SENATOR CEDILLO

ALSO PRESENT

DEBORAH MALUMED, M.D., Member
California Community Colleges Board of Governors

SENATOR ALAN LOWENTHAL

BARBARA GOTHARD, Ph.D., Member
California Community Colleges Board of Governors

LOUIS G. MONVILLE, III, Member
California Community Colleges Board of Governors

ASSEMBLYMAN RUSS BOGH

JONATHAN LIGHTMAN
Faculty Association
California Community Colleges

1 LORETTA DOON, Member
California Lottery Commission

2 JOHN M. MASS, Member
3 California Lottery Commission

4 JOE NUNEZ
5 California Teachers Association

6 BRUCE ALLEN
7 California CPA

8 BRUCE YOUNG
9 California Retailers Association

10 CANDICE A. TRAEGER, Member
Occupational
11 Safety and Health Appeals Board

12 BARRY BROAD
Teamsters

13 STEPHANIE WILLIAMS, Senior Vice President
14 California Trucking Association

15 MARY HERNANDEZ
16 SEIU

17 SUSAN FLORENTINE, Staff
18 CAL-OSHA Appeals Board

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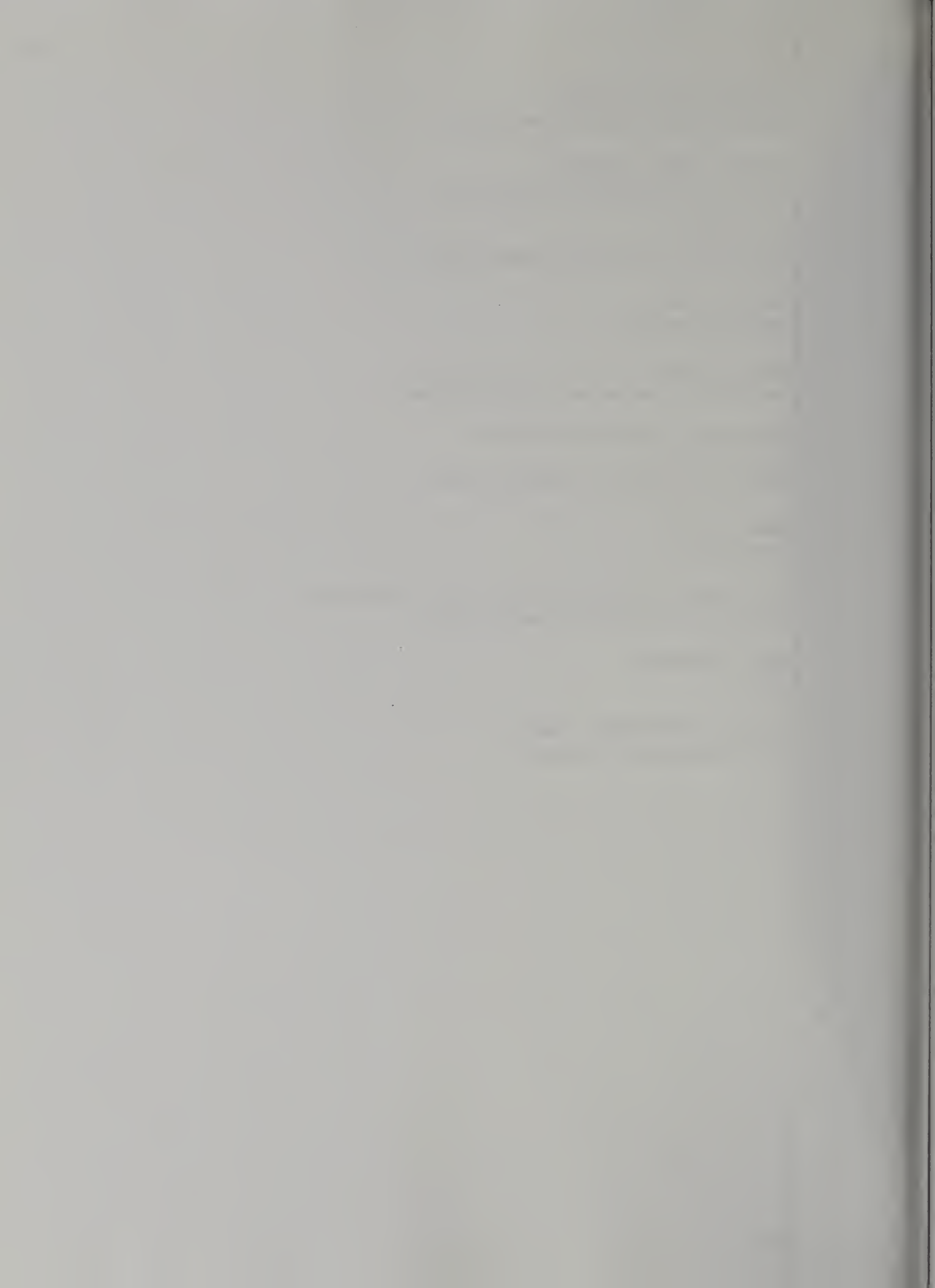
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P-R-O-C-E-E-D-I-N-G-S

--ooOoo--

CHAIRMAN PERATA: The Rules Committee is now in session.

Our first appointee, nominee, is Dr. Deborah Malumed. She's going to be presented by one of our Senators, Alan Lowenthal.

SENATOR LOWENTHAL: Senator Ashburn has asked me to be -- that brevity is the word for today. So, I'm pleased here. This is my second time introducing someone. I introduced Alan Lloyd as Secretary of EPA.

Now I have the pleasure of introducing Dr. Deborah Malumed as a Board Member for the California Community Colleges.

We all know the vital role that the community colleges play, and that they really are the embodiment of the California dream. And as such, with multiple missions and diverse populations, they really need a board that can reach out and can really be an effective board in what I consider a crucial time for the community colleges.

Dr. Malumed I've known for a number of years and is a practicing family doctor. She is a wonderful problem solver. She's the first person, the first doctor that a patient sees. She works both up here in Northern California in Sacramento and also in Southern California.

She brings a host of skills to the board, including her interest in improving the medical system, providing more access in the community colleges for nurses and

1 other health care professionals. And I'm just really pleased to
2 offer for confirmation Dr. Deborah Malumed to the Committee.

3 Thank you.

4 SENATOR BOWEN: Question of Senator Lowenthal.

5 Do you have any particular relationship that
6 causes you to be --

7 SENATOR LOWENTHAL: I should disclose that
8 Dr. Malumed is my beloved wife.

9 [Laughter.]

0 DR. MALUMED: Thank you very much for that nice
1 introduction.

2 I'm very happy to be here today. I've submitted
3 written answers to your questions. And the thing that's a
4 little bit different about me is, I am a family physician.

5 And when I think about the Board of Governors and
6 the community colleges, medicine is a large industry in the
7 State of California, and the community colleges train people who
8 do many jobs in the medical field. So, I'm very concerned about
9 that and hoping to help in all the ways that I can there, and
0 just looking forward to being a part of the education system in
1 California.

2 I don't know if you had any questions.

3 CHAIRMAN PERATA: To have a powerful guy really
4 helps.

5 Do you have any family here?

6 SENATOR LOWENTHAL: What am I, chopped liver?

7 [Laughter.]

8 DR. MALUMED: I've met many people here today

1 that I haven't seen in a while.

2 CHAIRMAN PERATA: Do you have any other family
3 here?

4 DR. MALUMED: No.

5 SENATOR BOWEN: I have one question to all the
6 nominees.

7 CHAIRMAN PERATA: I want to call all three up
8 afterwards, and we can just have a discussion.

9 Thank you, Doctor.

10 DR. MALUMED: Thank you.

11 CHAIRMAN PERATA: Next up another doctor, Barbara
12 Gothard.

13 Welcome.

14 DR. GOTHARD: Thank you. Good afternoon.

15 Mr. Chairman and fellow Senate Rules Committee
16 Members, the first thing I'd like to do is thank you very much
17 for meeting with me today.

18 And secondly, for the opportunity to appoint me
19 to serve on the California Community Colleges Board of
20 Governors.

21 Secondly, I'd like to acknowledge and thank the
22 Senate Rules Committee staff and the community colleges staff
23 for their assistance throughout this process. I really
24 appreciate their attention to detail, and their
25 professionalism.

26 One aspect of the preparation process included a
27 series of very thought-provoking questions that you submitted to
28 us. And I have responded to those questions, and I believe that

1 you have received those in advance.

2 During my tenure on the Board of Governors, I
3 anticipate that I will participate as fully as possible in the
4 governing process, and that I will bring the strengths of my
5 fairly unique background in both the educational sector, the
6 corporate sector, as well as the nonprofit sector to ensure that
7 all the students become trained as well as possible to go into
8 today's workforce.

9 In conclusion, I'm honored to be appointed. I'm
0 excited about the opportunity, and I thank you very much for
1 your consideration.

2 I'll be pleased to answer other questions that
3 you might have.

4 CHAIRMAN PERATA: Thank you very much, Doctor.

5 Our final in the Board of Governors is Louis
6 Monville the Third.

7 SENATOR BATTIN: Mr. President, I'm going to
8 introduce him. If it's all right with you, I'll do it from
9 here.

0 Thank you, Mr. President and Members. Lou
1 Monville is a friend of mine. We've known each other for a very
2 long time.

3 CHAIRMAN PERATA: He's a lot younger.

4 [Laughter.]

5 SENATOR BATTIN: Well, either I look older than I
6 am, or he looks younger than I am. He kind of runs in that
7 vogue clan, so I figure he's probably about 19, 20 years old.

8 But the best thing I can say, and truly the best

1 descriptor of Lou is that he's very professional, and he gets
2 things done, which is what we want on the Community College
3 Board. Whether he's leading the Chamber of Commerce in
4 Riverside, or in his professional life with O'Reilly Public
5 Relations, people know him, respect him, and look to him to get
6 things done.

7 He's competent, follows through, understands that
8 there's a long-term vision, which is exactly the type of person
9 that we need on this job, and the Governor made a great choice,
10 and he will serve our state very, very well.

11 CHAIRMAN PERATA: Thank you.

12 MR. MONVILLE: Senator, thank you for that
13 introduction.

14 Mr. Chairman, Members of the Rules Committee, I'm
15 very pleased to be here today as a nominee for the California
16 Community College Board of Governors.

17 This is an exciting time to be a part of
18 California's community colleges, and I just feel very fortunate
19 to have the opportunity to be here.

20 I'm also very fortunate to come from a very
21 supportive family who's supportive of my service.
22 Unfortunately, my wife, Kelly, couldn't be with me here today.
23 She's an elementary school vice principal, school starts on
24 Monday, and duty calls. She's got three new classrooms to set
25 up.

26 However, I am very fortunate to have my father
27 with me today, a retired public school teacher, Dr. Lou
28 Monville. So if I could take a moment and just acknowledge his

1 presence.

2 CHAIRMAN PERATA: Welcome.

3 MR. MONVILLE: He's always been right by my side
4 and is with me today, and I just wanted to thank him for joining
5 me.

6 I do believe it's an exciting time to serve our
7 community colleges. We have some fantastic opportunities before
8 us. I look forward to having a chance to work with you and your
9 colleagues in the Legislature to assist in helping the 2.5
0 million California community college students find success in
1 their chosen paths.

2 I've seen first-hand how community colleges are
3 changing Californians' lives for the better every day, and I
4 hope to have positive role in that process.

5 In fact, my brother, Sean, is a firefighter in
6 the City of Santa Ana, and he loves his job. And it's a job
7 that he has because of the training and the education that he
8 received at one of our community colleges.

9 I want to thank the Rules Committee staff and the
0 staff of the California Community Colleges for their assistance
1 through this process. I had opportunity to respond to your
2 questions that I was given by the Committee in advance of today
3 and appreciated that opportunity.

4 I know you all have a very full agenda today and
5 a busy schedule. I'd be happy to answer any of your questions
6 further. I appreciate your time and your consideration of my
7 appointment for confirmation, and I thank you for that.

8 CHAIRMAN PERATA: Thank you.

1 I'd like to call the other two appointees up, and
2 then we'll have a little discussion.

3 Senator Bowen.

4 SENATOR BOWEN: Thank you.

5 First, a special welcome to a fellow Spartan. I
6 read your resume.

7 DR. GOTHARD: And from Illinois, too, originally.

8 SENATOR BOWEN: One of the issues that I've spent
9 some time working on is the issue of fees for the acceptance of
10 credit cards.

11 I've read all of your responses to the question
12 about student fees, and was really pleased to see the
13 acknowledgement that there's a concern about stability and
14 predictability, and how fees are set so that students can
15 anticipate what they have to spend.

16 The community colleges seem to have quite
17 different policies from campus to campus on how they deal with
18 credit cards. Some impose a surcharge. Some students want to
19 pay tuition with a credit card; others don't.

20 As I'm sure you all know, there's a great move to
21 get students to register online because it saves a lot of money
22 in having to set up a very intensive operation for a brief
23 period of time during registration, and the only way that we
24 have for people to pay things online is credit card.

25 So, what we're seeing is, people going through
26 the process of registration, hitting that part where they have
27 to pay a surcharge on the credit card, and then stopping and
28 either not registering or deciding to come in, stand in line, go

1 through the process, or mail in their application.

2 I'm not asking for a position at this point, but
3 I think it's something that the Community College Board should
4 work on as a policy matter. In particular, I'd like your
5 commitment to look at the overall economics of credit card
6 acceptance.

7 I know it's easy to call out a credit card for a
8 surcharge. It's illegal in the private sector in California.
9 We don't have a separate processing fee for paying by check or
10 by money order, even though it's clearly more expensive to
11 process a check, with the float and the bounced checks, and
12 whatever than it is a money order, which is most of the time
13 cash in the bank.

14 But this is an issue that I think we're going to
15 have to confront as we deal with, more and more, moving towards
16 electronic registration. And it really penalizes students who
17 are paying on a credit card because they don't have enough cash
18 in their checking account to pay in whole tuition.

19 So, I would just ask for your commitment to work
20 with me and others who are concerned about this on formulating a
21 policy that protects the fiscal needs of the community colleges,
22 but at the same time really moves us into the 21st Century in
23 dealing with this issue of credit and debit cards, particularly
24 accepted on line.

25 So yes, we can work together on that issue.

26 ALL APPOINTEES: Yes.

27 SENATOR BOWEN: Thank you.

28 CHAIRMAN PERATA: Senator Ashburn?

1 SENATOR BATTIN: I'll move the confirmation of
2 the nominees.

3 CHAIRMAN PERATA: Okay.

4 The only sort of a threshold question is, and I
5 don't even know if it's a question, but given the state of
6 funding for higher education in California, there is a certain
7 compaction taking place where the community colleges are playing
8 an even larger role. And one of the things that was called to
9 my attention is the availability of public assistance to members
10 of the system.

11 And the other one is the growing need for
12 something that, when I was teaching, we practically had none
13 left, and that was counselors to advise students on what's the
14 best place to go, and then what are the courses necessary to
15 take that.

16 You probably know, we don't have curriculum
17 alignment like we always talk about in K-12. Different
18 universities and campuses have different standards.

19 I would just encourage you to be aware of that,
20 because you'll have to be the advocates for a lot of these
21 students, that they don't end up, because many of them are
22 working, one, they don't end up spending money that ought to
23 properly be spent for higher education. And secondly, they
24 don't waste any time taking the wrong things to get where they
25 need to go.

26 I would just urge you to pay attention to that.
27 We hear quite a bit of that.

28 This is a wonderful and vulnerable part of our

1 educational system, and in some sense it's probably the most
2 important because it was built as the gateway.

3 So, I want to just thank you for doing this. I
4 know I can't do everything, but I'm sure you'll do a lot. I
5 congratulate you for taking on the responsibility.

6 We now would ask if there's anybody who'd like to
7 come and speak in favor of?

8 ASSEMBLYMAN BOGH: Thank you Mr. President.
9 Assemblyman Russ Bogh in support of the nominees.

10 CHAIRMAN PERATA: God love you. That was
11 fabulous.

12 MR. LIGHTMAN: Mr. President and Members,
13 Jonathan Lightman from the Faculty Association of California
14 Community Colleges.

15 We want to affirm our support for Dr. Malumed,
16 and we look forward to working with all members of the Board of
17 Governors on the issues that you mentioned.

18 Thank you.

19 CHAIRMAN PERATA: Thank you.

20 Anybody else? Anybody in opposition?

21 Seeing none, we have a motion to approve all of
22 the appointees. Please call the roll.

23 SECRETARY WEBB: Ashburn.

24 SENATOR ASHBURN: Aye.

25 SECRETARY WEBB: Ashburn Aye. Bowen.

26 SENATOR BOWEN: Aye.

27 SECRETARY WEBB: Bowen Aye. Cedillo.

28 SENATOR CEDILLO: Aye.

1 SECRETARY WEBB: Cedillo Aye. Battin.

2 SENATOR BATTIN: Aye.

3 SECRETARY WEBB: Battin Aye. Perata.

4 CHAIRMAN PERATA: Aye.

5 SECRETARY WEBB: Perata Aye. Five to zero.

6 CHAIRMAN PERATA: Congratulations, it's

7 unanimous.

8 DR. MALUMED: Thank you very much.

9 DR. GOTHARD: Thank you.

10 CHAIRMAN PERATA: I would like to lift the call
11 on the Item Four, please.

12 [Thereupon the Rules Committee
13 acted on a legislative item.]

14 CHAIRMAN PERATA: We have our next two, first,
15 Loretta Doon, Member of the California State Lottery
16 Commission.

17 Loretta, if you'd come forward, please.

18 The attention span here is zero, rampant ADHT.

19 [Laughter.]

20 CHAIRMAN PERATA: You never give them sugar.
21 Welcome.

22 MS. DOON: Thank you.

23 Chairman Perata and Members of the Rules
24 Committee, my name is Loretta Doon. I am up for confirmation
25 for the Lottery Commission. Thank you very much for having me
26 here today.

27 The California Lottery Act requires that one of
28 the Commissioners be Certified Public Accountant. I have been a

1 Certified Public Accountant, with an active license in
2 California since 1979. Currently I am Chief Operating Officer
3 for the California Society of CPAs, an organization that
4 represents about 28,000 thousand CPAs in the State of
5 California.

6 I have also been a Trustee for the California
7 Society Education Foundation and Chair of that Foundation. That
8 Foundation, associated with California's CPA Society, provides
9 continuing education for CPAs in California and throughout the
10 country.

11 I have been on the Council for the American
12 Institute of CPAs. And prior to that, I was with the California
13 Teachers Association for over 25 years as its Financial
14 Director.

15 I think it's interesting that my name was put up
16 to be part of the Commission because what I bring is a financial
17 perspective to the Commission and an education connection.
18 That's one of my goals, to bring those two pieces together.

19 It's truly an honor for me. I think I'm going
20 to bring my experience, my expertise, and my energy to the
21 Commission.

22 I understand the Lottery's mission to provide
23 funds for education, for public education in California, but I
24 also understand that those funds are not by any means a solution
25 to education funding in California.

26 And I empathize and commend you for the work that
27 you're doing to provide the necessary funds to public education
28 and for the students in California.

1 Having said that, I will do my best to fulfill
2 that mission. I am proud to serve the State of California, and
3 I ask for your consideration and will answer any questions that
4 you may have.

5 Thank you.

6 CHAIRMAN PERATA: Thank you.

7 Debra.

8 SENATOR BOWEN: Mr. Chair, I have questions but
9 they are both nominees, and in the interest of shortening the
10 amount of time we take --

11 CHAIRMAN PERATA: Okay, let's do that then. Just
12 stay right there.

13 SENATOR BOWEN: Then if I could defer to Senator
14 Battin so I can finish my lunch, that would be much appreciated.

15 CHAIRMAN PERATA: John Mass, would you come
16 forward, sir. Our second appointee to the State Lottery
17 Commission.

18 Welcome.

19 MR. MASS: Thank you.

20 Good afternoon, Chairman Perata, other Committee
21 Members. It's a pleasure to be here to briefly address you on
22 the topic today.

23 I have been a resident of California since 1989,
24 when I moved here from Illinois, and have been working at the
25 William Morris Agency for the last 14 years.

26 I thought it'd be helpful just to give you a
27 little background on myself and why I want to be involved with
28 the Commission.

1 When I was growing up, my parents stressed
2 education in my family's life. All my siblings, my four
3 siblings, have all graduated from college and all have done it
4 because of parent-stressed reading, writing, and arithmetic, but
5 also the social skills that we got from being at school and from
6 the problem solving that we were able to learn, how to solve
7 problems in a group environment. I think it made me and my
8 siblings who we are today.

9 So, when I became -- came to the working world, I
10 tried to find ways that I could support public education because
11 it had been so good to me. And I found it difficult at first,
12 but I found a program that former Mayor Riordan of Los Angeles
13 had started as a counsellor for students within the classrooms,
14 primarily the L.A. Unified School District, but in primarily
15 South Central. I got an incredible rewarding experience from
16 doing it.

17 Then I was -- participated in things like
18 Principal for a Day, where I actually became a principal for a
19 day during a school year, and also found that in incredibly
20 rewarding.

21 But when Governor Schwarzenegger asked me to join
22 the Commission, I saw this as a great opportunity to not only
23 help a handful of students, like I was doing in things like
24 Mayor Riordan's program, but thousands of students. And that's
25 really what I look at from the Commission. It's an opportunity
26 to help thousands of students throughout the State of
27 California.

28 And while I don't see the Lottery as a panacea, I

1 think it is an incredible successful and rewarding and
2 beneficial thing for the state, and one that can be improved on
3 and get better and better. And I think we're well on our way,
4 having participated in the Lottery for the last few months, to
5 improving and contributing even more to education.

6 So, if anyone has any questions, I'd be happy
7 inform address them.

8 CHAIRMAN PERATA: You did you ever cross paths
9 with Senator Murray when you were in the agency?

10 MR. MASS: I did cross paths with Senator Murray,
11 but only after the fact, after he was with the agency.

12 CHAIRMAN PERATA: He's much older.

13 MR. MASS: He was much older, yes. We all went
14 through the same process, and we started in the same place,
15 which is the Mail Room.

16 CHAIRMAN PERATA: That's not just a myth.

17 MR. MASS: It's there, and there's a book about
18 it, and there's going to be a movie, I think, about it, as a
19 matter of fact, for HBO.

20 SENATOR BOWEN: It's called "Get Shorty."

21 [Laughter.]

22 MR. MASS: You know it too well. She has inside
23 information, but it still exists.

24 CHAIRMAN PERATA: You're from Illinois as well.
25 Lots of this Illinois stuff going on here today --

26 MR. MASS: If you spent a winter in Illinois, you
27 might come out here, too.

28 [Laughter.]

1 SENATOR BOWEN: Fine, outstanding people.

2 CHAIRMAN PERATA: Okay, let's go ahead. Senator
3 Battin.

4 SENATOR BATTIN: Thank you, Mr. Chairman.

5 It's not really so much a question as what I
6 forewarned you I was going to bring up this morning, when we
7 talked.

8 Before my time in the Legislature, I worked for a
9 television station. One of our very best clients we were so
10 happy to get business from was the California State Lottery,
11 because you just over-paid on your advertising every single
12 time. It was remarkable how the state throws money around.

13 I would imagine that's not only to do with the
14 Lottery, but they probably do it with other state campaigns.

15 As people who are charged not only with running
16 it, looking into the fiduciary side of your organization, I
17 would ask you to look into that. It's been a while since I've
18 been in television on the selling side of it, but I'm telling
19 you on one situation, I think we had charged like \$800 for a
20 commercial in primetime. The Lottery was paying \$1500 to \$1700.
21 It was outrageous.

22 What should concern you the most is that you have
23 a large buying firm, and they handle lots of other clients who
24 were buying our time as well, which means they were aware of it.

25 So, it's just something that I think you should
26 look into. Maybe it's changed, I don't know, but I would
27 certainly appreciate it. If you look into, let me know one way
28 or the other on it. I just don't think it's just a problem with

1 the Lottery. I think probably if you got the Clean Power
2 campaign up here as well, I probably would find the same thing
3 there, as well as other things that the state buys. But if
4 we're going to spend the people's dollars, then we should spend
5 it as efficiently as we can.

6 That's it. I'm satisfied with the nominees.
7 I'll move their confirmation.

8 CHAIRMAN PERATA: Senator Bowen.

9 SENATOR BOWEN: Thank you.

10 Let me start with an issue that I know Senator
11 Battin's been interested in as well, and that's the issue of
12 problem gambling.

13 What's the Lottery currently doing to deal with
14 the issue of problem gambling?

15 The background of this is that I understand that
16 the Lottery generates now about \$3 billion in sales, and spends
17 31 million annually on advertising, yet spends a total of
18 \$85,000 to contract out for an 800 number for problem gamblers.
19 That's it.

20 Is that sufficient in your view? Do you think
21 the Lottery could do more?

22 The issue, obviously arises more with other forms
23 of gambling. I think most compulsive gamblers aren't running
24 down to the 7-11 to buy strips of Lottery tickets, except when
25 the jackpot's really big.

26 What's your view of the Lottery's responsibility
27 for dealing with social consequences of gambling?

28 MS. DOON: I think I'll start.

1 The Commissioners realize that there is an issue
2 with problem gambling. And your quote of 85,000 to deal with it
3 is just about right. It's actually more like a little over
4 \$100,000.

5 Right now what the Lottery's doing is that there
6 is a 24/7 hotline to deal with folks who want to have help or a
7 need to call in. There's also brochures and publications that
8 are distributed through our 18,000 retailers in the State of
9 California. And on the Lottery website.

10 SENATOR BOWEN: Are the retailers required to
11 post the brochures? I don't remember ever having seen one.

12 MS. DOON: They are issued to the retailers.

13 SENATOR BOWEN: But are they required to do
14 anything other than leave them in a box in the stockroom?

15 MS. DOON: In terms of a requirement, I don't
16 think there's any regulation that requires them to display it,
17 but we do encourage them, and I know that they're distributed to
18 the sites.

19 If you do notice a site that does not have that
20 display, you know, I'm sure if we call the Lottery Office we can
21 take care of that.

22 In addition to that I just mentioned the website
23 that provides very specific ways on how to deal with problem
24 gambling and references to the hotline as well.

25 But in answer to your question, in addition to
26 that, you know, we are looking at it as Commissioners and seeing
27 what we can do more.

28 SENATOR BOWEN: Okay.

1 Mr. Mass.

2 MR. MASS: It was something I was very concerned
3 with when I first got involved with the Lottery, because I knew
4 that there was a -- somewhat of a stigma associated with the
5 Lottery as it related to gaming in general.

6 And while it's a piece of the gaming business or
7 gambling, it is -- it's one that is important that if people
8 feel that there is an issue where our customers are doing it in
9 an irresponsible manner, playing the Lottery in an irresponsible
10 manner, we have to do things about it.

11 I asked about it. I asked that when I first
12 started for the staff to outline exactly what we are doing. And
13 they've sent us a memo, which I was very comfortable with, that
14 enough was being done.

15 I then asked specifically, are there any other
16 issues beyond the lobbyists that might be speaking specifically
17 on the issue? And they felt that it isn't; it's something that
18 they audit on a regular basis.

19 Because it's important to me, I'm going to make
20 sure that it's important to staff throughout my term.

21 SENATOR BOWEN: Did you ask by any chance what
22 other states were doing?

23 MR. MASS: No, I never asked.

24 SENATOR BOWEN: I know that one of the things
25 that I noticed, and I can't remember whose application it is,
26 was that you thought it would be beneficial to learn from other
27 states that have lotteries.

28 I can tell you that in Delaware, one percent of

1 the Lottery proceeds fund a compulsive gambling program. On
2 Lottery sales of \$641 million dollars, that' \$6.4 million.

3 If we set aside the same percentage in
4 California, we'd have \$30 million as opposed to 85,000 or
5 100,000.

6 Louisiana takes one percent of proceeds to fund
7 compulsive problem gambling treatment services; Iowa,
8 three-tenths of a percent; Connecticut, \$1.2 million dollars to
9 a chronic gamblers fund for education, prevention, and treatment
10 out of \$907 million dollars in Lottery sales.

11 So, I think we're way light in California on what
12 the Lottery has done to deal with this. I am going to start
13 looking for brochures, but I don't think I've ever seen one.

14 The question then becomes, if you're paying for
15 the distribution of the brochures and nobody's ever seen one,
16 perhaps a more effective mechanism for communication could be
17 found. I'll hope to see some further attention paid to this
18 issue, and perhaps in conjunction with some of the problem
19 gambling issues that are dealing with casinos.

20 Maybe the way to do this is to create a
21 collaborative body, not necessarily by statute but just for the
22 casino industry, the clubs, card clubs, the tracks, and the
23 Lottery to work together to deal with it. I'm sure it's many of
24 the same people. It just depends on what's close at hand that
25 day.

26 SENATOR BATTIN: Part of the Indian Gaming
27 Special Distribution Fund monies goes specifically to problem
28 gambling.

1 SENATOR BOWEN: Right. You and I have talked
2 about that. It goes there, but nothing gets done with it, by
3 and large.

4 SENATOR BATTIN: It goes to the state.

5 SENATOR BOWEN: And then we do nothing.

6 SENATOR BATTIN: It goes to the Department of
7 Mental Health.

8 SENATOR BOWEN: So, clearly the state's not doing
9 its part either.

10 Obviously, the elephant in the room, the
11 controversial issue is the Mega Millions game, so I'd like to
12 talk about that for a little bit.

13 The Commission voted on Tuesday, February 8, to
14 give the Lottery's Acting Director the authority to enter into
15 the contract to join Mega Millions. I believe that public
16 notice of the meeting was given on Friday, February 4th, in one
17 business day, and that it stated that the Acting Director would
18 recommend that California join the multi-state game, but not
19 that the Commission would act to the recommendation.

20 Do you know if that's accurate? Do you routinely
21 review the agenda and public notice to see if what you're doing
22 actually has been noticed?

23 MR. MASS: I certainly reviewed the agenda
24 beforehand. And I do review it to make sure if it's accurate of
25 what we're going to speak on that day at the meeting. So,
26 absolutely we did.

27 SENATOR BOWEN: I think there may be litigation
28 over whether or not the Commission had the authority to do that,

1 because the notice said that the Commission, or the Director
2 would present the issue, and not that there would be a vote on
3 the matter.

4 So, well, I guess the question is, who do you
5 rely on as legal counsel to make sure that you're complying with
6 your rules?

7 For us, it's this dapper gentleman sitting to the
8 left of Don Perata who makes sure that all of our process and
9 procedures are appropriate. Who is your Greg Schmidt?

10 MR. MASS: We actually rely on two sources.

11 CHAIRMAN PERATA: You see, I could have told you
12 it'd take two people to do your job.

13 [Laughter.]

14 MR. MASS: One is our counsel in-house, who had
15 an opinion on it. I think several reviewed it several times.
16 And the other is the Attorney General's Office, which gave two
17 opinions on the subject.

18 MS. DOON: At a Commission meeting prior to the
19 vote on the Mega Millions, I specifically recall asking our
20 chief counsel at the Commission meeting whether in fact all
21 California regulations with respect to the Lottery were being
22 followed, and that this would in fact be a legal transaction.

23 The Commissioners were assured that there was
24 opinion from the AG's Office, and it was in fact in-house
25 counsel's opinion that this was legally proper to execute.

26 SENATOR BOWEN: So, subsequent to that, we have
27 now a conflict of legal opinions. Which, of course, any time
28 you have two lawyers, you will have at least two legal opinions,

1 perhaps three or four.

2 And our Legislative Counsel has opined that the
3 vote to join Mega Millions violated the Lottery Act in a number
4 of ways.

5 Have you looked at that legal opinion, either of
6 you?

7 MR. MASS: I've not read the legal opinion, but I
8 had it summarized and reviewed by the chief counsel to us.

9 MS. DOON: I have read it.

10 SENATOR BOWEN: And what's your thought on what
11 the appropriate way to proceed is, now that there's a question
12 about the legality of the Lottery's entry into the Mega
13 Millions?

14 MS. DOON: You are correct, Senator, in that the
15 opinions are divergent. There are caveats, I think, on both
16 sides.

17 But with respect to the legislative opinion,
18 there was a disclaimer with respect to not reviewing or seeing
19 all documents related to the decision and the AG's opinion.
20 That is -- that was what I read, the start of that particular
21 opinion.

22 What happens now, it's something that, you know,
23 I think we as Commissioners are -- we're not attorneys. I'm
24 not, anyway. And I think it's something that the legal process
25 needs to decide.

26 SENATOR BOWEN: My other question about Mega
27 Millions had to do with a question of whether joining that game
28 would be good for California. The odds of hitting the jackpot

1 in the Mega Millions game are, I believe, 1 in 170 million. The
2 odds being struck by lightning are 1 in 700,000. The odds of
3 hitting the State Lottery jackpot is 1 in 41 million.

4 So, you've got a lot better shot if you go buy a
5 non-Mega Millions ticket. And you actually can do significantly
6 better at a Nevada mega bucks slot machine than you can in the
7 multi-whatever it is, Mega Millions. The slot machine odds for
8 the Nevada mega bucks slots are 1 in 49 million.

9 How do we determine, or how do you determine as
10 the policy makers for the Lottery, what is in the interests of
11 Californians when it comes to looking at the odds, the prize
12 money, what goes to schools, and so forth?

13 MR. MASS: I think we have to look it from, you
14 know, perhaps a 30,000 foot level, which is the -- if you look
15 at why the Lottery was created, it was to create funds for
16 education.

17 SENATOR BOWEN: Actually I think it was to create
18 contracting opportunities for lottery equipment vendors, but
19 that's my personal, cynical opinion.

20 MR. MASS: So if, in my opinion, and as I read
21 the Lottery Act, if it's to -- if it is to create more funds for
22 education, then we need to do, as Commission members, whatever
23 we can to increase that over time.

24 And I think in a very short period of time what
25 we've learned is, in spite of competing things with lower risk
26 -- or lower odds, excuse me -- something like a slot machine, or
27 even the California Super Lotto game, sales are up. They're up
28 20 percent since we launched Mega Millions.

1 It's unclear to what extent there's any
2 cannibalization of the Super Lotto game, but it looks to be
3 negligible at best. And we think in our first year that we will
4 increase revenues by three to five hundred million dollars.

5 SENATOR BOWEN: Have you looked at the curve for
6 participation in the Lottery and other games? Were you
7 presented with that information when you --

8 MS. DOON: We were provided with a lot of
9 information. This decision was not made, you know, in a day.

10 We asked a lot of questions about, well, what is
11 this going to generate with respect to the education funds, and
12 what kind of data did they have, staff and folks at the Lottery,
13 to demonstrate that we would be increasing those funds?

14 So, we were provided that information prior to
15 our meeting. I know I was. And I know at the meeting, we also
16 received a lot of information to support, data to support the
17 fact that by entering this particular game, that we could
18 increase the funds for public education by a certain amount.
19 The projection at that time was 300 to 500 million dollars.

20 SENATOR BOWEN: In the first year?

21 MS. DOON: Correct.

22 SENATOR BOWEN: I guess two things as follow-ons.
23 One is, when we do policy and legislative work here, we always
24 get a pro analysis and a con analysis.

25 Does anybody provides the Commissioners with any
26 information about the potential negatives, or arguments against
27 a particular decision?

28 MR. MASS: Not during this process.

1 But I think it's also the duty of the
2 Commissioners to challenge the suggestions and recommendations
3 by staff members. I think that my fellow Commission members did
4 a good job of challenging, and in a sense acting as that con.
5 Whether it was as a devil's advocate, or however you want to
6 call it, we challenged it. We were saying, "Is it legal? Is it
7 better for education? Will it have an impact on our existing
8 games?"

9 And after a lot of discussion, we came to a
10 decision.

11 SENATOR BOWEN: Did you get, or did anyone bring
12 to your attention the information about the history of
13 participation in other games? Because basically what happens
14 is, you get an early large amount of participation, and then you
15 get a fairly significant drop-off. That's a pretty common thing
16 that you see with lottery games, and the Lottery as a whole.

17 MS. DOON: You're absolutely right, that is the
18 trend. And that's why the Commissioners and the Lottery staff
19 are always looking at different ways to change the game, to
20 provide new games, to enter into a Mega Millions.

21 But another factor in the Mega Millions is
22 that -- the prize, the amount of the prize. It drives also the
23 amount of revenues that you could potentially get.

24 So, we did look at all of that. There was a lot
25 of data.

26 SENATOR BOWEN: I actually want to encourage you
27 to ask the Lottery Commission staff to provide you with the
28 arguments in con. And I agree, you have a duty yourselves.

1 But having served in a term-limited Legislature,
2 and having been appointed to policy committees on which I've
3 never before served on the policy committee, I found that the
4 work of staff, who have been there and who know the history, is
5 extremely helpful in identifying issues or providing a history
6 of things -- this has been my experience so commonly here --
7 that I just never would have thought of because of the
8 background on the particular issue, to think about some things.
9 So, I think that it will be really helpful to do that.

10 But that's your choice, obviously. The Lottery
11 Commission is not ours to run.

12 I do want to ask, since we're talking about
13 educational funding, about one further issue, and that is the
14 issue of the overhead that the Lottery has. The Lottery
15 statute, the Lottery Act is fairly generous. It provides a
16 maximum of 16 percent for overhead.

17 Typical other large states the last time I looked
18 closely at the Lottery were running at about 10 and 11 percent
19 in all forms of overhead, including advertising fees to
20 retailers, airplanes with banners, all those kinds of things.

21 It's, I believe, about 13 percent at the Lottery.
22 In most state agencies and programs, overhead is capped at 5
23 percent.

24 What do you think the best the Lottery can do is
25 in terms of containing overhead and administration expense,
26 knowing that you can either, if you reduce that 16 percent, send
27 additional dollars directly to the schools, or increase prizes?
28 Do you have a goal for where you want to go in terms of overhead?

1 MR. MASS: I'm going to let the CPA at the
2 Commission answer.

3 MS. DOON: I'll start and you can wrap.

4 You're right. The 16 percent administration is
5 determined by the Lottery Act.

6 Included in that 16 percent are the commissions
7 to the retailers. I mentioned the 18,000 retailers. They do
8 get a part of that.

9 The administrative overhead for the Lottery
10 Commission has actually been going down over the years,
11 particularly in this last year with respect to the amount going
12 to administration.

13 As far as your question as to how much that is, I
14 will tell you that every meeting the Commissioners are looking
15 at that amount. In fact, what we're trying to do is to minimize
16 it so that more can go, potentially, to prizes, to increase the
17 revenue pot for education.

18 So, I think we're moving in the right direction
19 with respect to that. For an organization, a multi-billion
20 dollar organization, the administrative cost actually, compared
21 to all other corporations, I think is very lean and reasonable.

22 SENATOR BOWEN: But again, the numbers with
23 regard to other state agencies and programs are 5 percent, as
24 compared to 16. Obviously we don't have an advertising budget.
25 Well, actually some agencies do. If you look at the money
26 that's being spent on awareness of mosquito and vector control
27 programs right now, I don't know what the amount is, but I know
28 they're spending.

1 MR. MASS: Senator Bowen, I may have something to
2 to add to that.

3 While the Act allows for 16 percent for
4 administrative -- of revenues to go toward administrative
5 expenses, this year we're going to be at about -- this past year
6 we're at 11.6 percent, I believe is the number. Approximately
7 11.6 percent. The rest of the money going back to education.

8 And when you factor in the amount of money that
9 we're paying as sales commissions to the retailers, we're
10 actually probably below that 5 percent level.

11 So, I think we're operating efficiently. And
12 while we constantly, as Commissioner Doon said, we're constantly
13 challenging people, I'm in charge of procurement area, I'm
14 constantly challenging the expenses, whether it's lap top
15 computers, or additional media, or even a roof on the building,
16 because I think we need to get it down because more money can go
17 toward education.

18 At the same time, we've reduced staff from I
19 think it was at 1200 down to 600, 600 people. So, we're have
20 cognizant, and we're going to continue to be.

21 SENATOR BOWEN: Thank you.

22 I have know further questions.

23 CHAIRMAN PERATA: Senator Ashburn.

24 SENATOR ASHBURN: Just one question, to go back
25 to the Mega Millions decision.

26 At the time that the Commissioners voted, were
27 you aware of the differences in legal opinions that were being
28 offered to you?

1 MS. DOON: No.

2 SENATOR ASHBURN: So, the Commissioners, what you
3 had before you was the opinion of counsel to the Commission and
4 the State Attorney General?

5 MR. MASS: That's correct.

6 SENATOR ASHBURN: And no opinion to the contrary.
7 And that came at some point following the decision and the vote
8 that had been taken.

9 MS. DOON: Correct.

10 MR. MASS: That's correct.

11 SENATOR ASHBURN: The other question that Senator
12 Bowen asked that I'm not sure was fully answered had to do with
13 the procedure that was followed in the notice requirement for
14 the vote.

15 The question has to do with the adequacy of the
16 notice that was posted on the agenda that would inform the
17 public that not only was the item going to be discussed, but it
18 was likely for action.

19 Did that raise any concern at that time? Is it a
20 concern to you now? Do you believe that the notice was adequate
21 at that time, and I'm not asking for legal standpoint, but at
22 Commissioners to look out for the best interests of the public
23 and their right to know.

24 MS. DOON: Senator, we were informed that the
25 notice was put out in adequate time.

26 What happened, the Friday before was the press
27 release related to that notice and the notification. So, we had
28 been informed by the Lottery staff that the notice did meet the

1 timeline requirements.

2 MR. MASS: If I recall correctly, and
3 Commissioner Doon, please tell me if I missed something here,
4 but the decision on Mega Millions spanned a couple of meetings.
5 So, we had a discussion about it. In fact, Commissioner Doon
6 had a series of questions that wanted some answers on before we
7 actually took a vote, and it extended on to another meeting that
8 was more than a month after.

9 So, it's something -- you know, our meetings are
10 public. And people -- the agenda is public. The minutes of our
11 meetings are all public, and so it's something that wasn't, in
12 our opinion, my opinion, sprung on people by surprise. It was
13 something that had been discussed over a period of at least two
14 meetings.

15 SENATOR ASHBURN: And I guess I could make the
16 point to the contrary, that because the conversation spanned
17 more than one meeting over more than one month, it could be
18 difficult for the public to track whether it's a discussion
19 item, or whether it's an action item.

20 And I think that's the issue here, is whether the
21 notice that was prepared and published to inform the public,
22 that it was adequate to disclose that this was no longer a
23 discussion item but, in fact, a vote was intended to take
24 place.

25 At this point, what has transpired has
26 transpired. The lesson is to make sure that the notices and the
27 postings of the meetings and the agenda items are full and
28 complete, so that the public does have the adequate time to

1 respond.

2 MR. MASS: I can assure you that in the future,
3 that will take place.

4 SENATOR ASHBURN: Thank you.

5 CHAIRMAN PERATA: I had a meeting a while back
6 with the California Black Publishers Association, and we were
7 discussing how much the state invests in advertising marketing,
8 among not only their members but, I think, all MBE, WBE, and DBE
9 businesses.

10 I don't need an answer right now, but I would
11 just like you to be cognizant of the comments made by Senator
12 Battin with regard to television. If you would just at some
13 point ask for a review of how your money is being distributed in
14 a lot of neighborhood publications, newspapers, minority radio
15 stations, et cetera, I'd be grateful for that.

16 MR. MASS: Absolutely.

17 CHAIRMAN PERATA: Any further questions from the
18 Members?

19 Anybody in the audience who'd like to speak in
20 favor of? Mr. Nunez.

21 MR. NUNEZ: Joe Nunez, California Teachers
22 Association.

23 We are here to support Loretta Doon. As she told
24 you, she was a long-time Controller for the California Teachers
25 Association.

26 In Loretta, you get a person of great integrity,
27 tremendous commitment, and we highly support her confirmation to
28 the Lottery Commission.

1 Thank you.

2 CHAIRMAN PERATA: Thank you.

3 MR. ALLEN: Mr. President, Members, Bruce Allen,
4 with California Certificated Public Accountants.

5 We've known Loretta Doon for some time, as you
6 might well imagine. We're very proud of the fact that she's
7 offered her services for the Commission. And our members,
8 28,000 strong, do encourage you to confirm her.

9 Thank you.

10 CHAIRMAN PERATA: Thank you.

11 MR. YOUNG: Mr. Chairman and Members, Bruce
12 Young, on behalf of the California Retailers Association, here
13 in support of Loretta Doon, a personal friend, I might add.

14 But we think her background and training as a CPA
15 and also her experience with CTA will help make sure that the
16 bulk of the proceeds, and keep in mind, this is for education,
17 so we'd encourage the recommendation for her confirmation.

18 CHAIRMAN PERATA: Thank you.

19 Anybody in opposition?

20 MR. MASS: I just want to say, in spite of no one
21 here speaking on my behalf, I'm a good person and people like
22 me.

23 [Laughter.]

24 CHAIRMAN PERATA: I was sort of hoping one of
25 those people I know back there would have enough sensitivity to
26 have gotten up.

27 [Laughter.]

28 CHAIRMAN PERATA: We have a motion. Call the

1 roll, please.

2 SECRETARY WEBB: Ashburn.

3 SENATOR ASHBURN: Aye.

4 SECRETARY WEBB: Ashburn Aye. Bowen.

5 SENATOR BOWEN: Aye.

6 SECRETARY WEBB: Bowen Aye. Battin.

7 SENATOR BATTIN: Aye.

8 SECRETARY WEBB: Battin Aye. Perata.

9 CHAIRMAN PERATA: Aye.

10 SECRETARY WEBB: Perata Aye. Four to zero.

11 CHAIRMAN PERATA: Congratulations.

12 MR. MASS: Thank you very much.

13 MS. DOON: Thank you.

14 CHAIRMAN PERATA: Our final gubernatorial
15 appointee is Candice Traeger, Member of the Occupational Safety
16 and Health Appeals Board.

17 Welcome.

18 MS. TRAEGER: Honorable Senate Pro Tem and
19 Members of the Senate Rules Committee, thank you for the
20 opportunity to express myself before you today.

21 I come before you today to ask for my Senate
22 confirmation vote. My name is Candice Traeger. I'm currently
23 serving as Chair of the Occupational Safety and Health Appeals
24 Board.

25 The Board serves a vital mission of promoting
26 workplace safety with a consistent application of statutes and
27 regulations, while processing appeals of OSHA citations.

28 I believe I bring to the Board a unique and

1 valuable perspective. I worked my way through the ranks of the
2 Teamsters at United Parcel Service. Once in management, I
3 worked with labor to accomplish our shared goals, one of those
4 being workplace safety.

5 I possess a solid knowledge of California and
6 federal OSHA rules, having served in that function during my 25-
7 year career at United Parcel Service. The insight I've gained
8 from my experience, almost a decade spent as a Teamster, allows
9 me to understand and serve the interests of all parties to the
10 process.

11 My background lends itself well to the needs of
12 the Board because as Chair, it's my responsibility to run the
13 day-to-day operations of the Board. I've worked as a clerk, a
14 loader, a driver, an industrial engineer, health and safety
15 expert, a lawyer, and I've also managed an operations center at
16 UPS with 1500 employees.

17 I strive to create a workplace that fosters
18 teamwork, efficiency, professionalism, and a common goal: to
19 promote workplace safety and give the public guidance.

20 I'd like to share some of the good things that
21 are happening at the Board. Last year, through the end of July,
22 we have processed 1966 appeals. This year, during the same
23 time, we processed 2395. That means the number of appeals that
24 are processed by month has risen from 281 to 342 during my
25 tenure at the Board. In the last four months alone, we've
26 assessed over \$800,000 more in penalties than the year before my
27 arrival at the Board.

28 The administrative law judges are producing 47

1 percent more than last year, from 1334 appeals processed last
2 year, compared to 1947 this year. Much of this has been
3 accomplished by the implementation of streamlining measures that
4 have been urged by the judges, that reduce redundancy, create
5 efficiencies, and maintain the quality and integrity of orders
6 and decisions.

7 We've reduced the amount of time required to
8 process an appeal by four months, from 24 months to 20 months
9 during my tenure. This is largely due to the implementation of
10 performance measures to create goals that we've never before had
11 at the Board. And a good part of that is getting out of
12 people's way and letting them do the job that they do the best.

13 We're still short of our goal, and we expect to
14 reduce our processing time to ten months.

15 Our staffing levels have also been raised by 30
16 percent, because when we did introduce our performance measures
17 and our goals, we have been able to justify and predict a
18 timeline of two years to reduce the backlog to zero.

19 Most importantly, we've set into motion a
20 momentum that will continue by improving procedures and
21 processes, creating goals, improving employee morale, and
22 creating a positive work environment that flourishes, while
23 increasing productivity and accountability.

24 That said, I respectfully and honorably ask for
25 your vote and confirmation as Chair of the Occupational Safety
26 and Health Appeals Board. Thank you.

27 If you have any questions?

28 CHAIRMAN PERATA: Thank you.

1 Senator Ashburn, questions?

2 I have a question.

3 There was some controversy about withholding
4 information from a Member. I'd just like you to address this.
5 I know it ended up in court. What happened?

6 MS. TRAEGER: Well, I am new to government
7 service, and I am still learning. In hindsight, I shouldn't
8 have issued the directive.

9 As Chair, my goal has always been to reduce the
10 backlog and to run efficiently. I wanted everyone to come to
11 work in the office. It was a worthy goal.

12 If I had it to do again, I would do it
13 differently.

14 My directive, however, made available materials
15 at the office and through check out at home. And yes, it did
16 have a practical effect of making all the Board Members come
17 into the office to get the materials.

18 If I had it to do again, I'd do it differently.

19 CHAIRMAN PERATA: Well, if you had to spend much
20 time with them, probably you'd do it differently, too. That's a
21 by product of asking it.

22 Thank you. I appreciate that.

23 Senator Battin?

24 SENATOR BATTIN: Move the confirmation.

25 CHAIRMAN PERATA: Anybody here in support?

26 MR. BROAD: Mr. Chairman and Members, Barry
27 Broad on behalf of the Teamsters.

28 I've known and worked with Candice for many years

1 when she was at UPS, and I always found her to be of the highest
2 ethical nature, very efficient, extremely competent, and very
3 intelligent person, and someone who has been appointed in a
4 position -- we supported her when he was trying to get this
5 appointment. We support her confirmation now.

6 She's a thoughtful person, and it's rare that
7 somebody comes up through the ranks, puts themselves through law
8 school, and has done every job at UPS, from the entry level job
9 all the way up to a high level management job, who understands
10 what ordinary workers have to experience.

11 We're not always going to agree, maybe,
12 philosophically, but the Governor is entitled basically to have
13 people confirmed who share in the philosophy of the
14 administration. They won the election; they get to choose the
15 appointees. And that's, I think, the standard from which we
16 should go, barring people engaged in misconduct or whatever.

17 In this case, I believe that this is a fine
18 appointee, and she's working very hard, and she deserves your
19 support.

20 Thank you.

21 CHAIRMAN PERATA: Thank you.

22 MS. WILLIAMS: Good afternoon. My name is
23 Stephanie Williams. I'm the Senior Vice President of the
24 California Trucking Association, and we're here to support the
25 confirmation of Candice Traeger.

26 Candice, as a lobbyist for UPS, sat on our board.
27 Our board has 108 members, and she effectively -- it's a very
28 difficult board to work on. She effectively managed some of the

1 committees.

2 CHAIRMAN PERATA: Are you nuts?

3 MS. WILLIAMS: Yes. But she did a really good
4 job. It is a male bonded board, and she stood up there and
5 really got her points across and helped her company move good
6 policies through our board and, hopefully, through California's
7 Legislature.

8 We ask for her confirmation. Thank you.

9 CHAIRMAN PERATA: Thank you.

10 MS. HERNANDEZ: Good afternoon. Mary Hernandez,
11 SEIU State Council, on behalf of Local 1000, State Employees.

12 We are very proud to sit here next to Ms. Traeger
13 and support the confirmation of her appointment. Many of the
14 workers have come together at the Appeals Board to say that she
15 has been exemplary to work with and to work for, that she has
16 been very helpful in creating a better work environment at the
17 workplace.

18 I have here with me Susan Florentine, who works
19 for Ms. Traeger at the Appeals Board and wanted to say a few
20 things.

21 CHAIRMAN PERATA: Thank you.

22 MS. FLORENTINE: Hello. I'm Susan Florentine.
23 Bear with me, a little nervous.

24 First I'd like to thank the Committee --

25 SENATOR BOWEN: Don't worry. We only ask
26 questions of the nominee.

27 [Laughter.]

28 MS. FLORENTINE: First I really would like to

1 thank the Committee for allowing me this opportunity to speak in
2 support of the confirmation of our Chairperson, Candice Traeger,
3 to the OSHA Appeals Board.

4 I would like also to point out that the opinions
5 I express to you today are not only my own, they are also the
6 collective opinions of the entire support staff of the OSHA
7 Appeals Board. And I've been asked to express them to you here
8 today.

9 I would also ask that the Committee take into
10 consideration the numerous letters of enthusiastic support of
11 Ms. Traeger's confirmation that were sent to the Committee over
12 the last few weeks.

13 Ms. Traeger has brought to the Appeals Board a
14 sincere commitment to improve and streamline the appeals
15 process. From the very beginning, she has had an unprecedented
16 open door policy and has encouraged staff to make suggestions
17 and express opinions on how to better serve the appeal process.
18 By doing so, she has greatly motivated staff which has resulted
19 in the documented increased productivity at all levels of the
20 appeals process.

21 She has been instrumental in obtaining five new
22 and very much needed support staff positions at the Appeals
23 Board. This has greatly worked toward reducing the ever
24 increasing backlogs that we have had in the past.

25 While reviewing all of my co-workers' letters,
26 certain words describing Ms. Traeger were repeated time after
27 time. They were integrity, commitment, fairness, enthusiasm,
28 ability, and drive.

1 Any changes that Ms. Traeger has either made or
2 has attempted to make at the Appeals Board have only come from
3 her sincere desire to better serve all those that come into
4 contact with the Cal OSHA Appeals Board. I firmly believe this,
5 as do my co-workers. This belief gives us all the renewed
6 desire to do the same thing, to better serve the people of the
7 state.

8 Our Appeals Board has seen many changes since Ms.
9 Traeger's appointment. All of them have been a move to the
10 right direction and have been most welcomed by staff.

11 We would also like point out that Ms. Traeger has
12 the enthusiastic support of our union, the SEIU, which
13 represents nearly 88,000 state employees. I hope that their
14 strong endorsement, along with our efforts here today, will
15 convince the Committee to confirm Ms. Traeger's appointment.

16 We, the support staff of the Appeals Board, believe
17 that if Ms. Traeger is not confirmed, the state will lose a
18 long-awaited opportunity for real change toward a more effective
19 Appeals Board. We believe that Ms. Traeger's ultimate goal is
20 to best serve the people of this state, whether they be
21 employers who file appeals, the divisions that issue the
22 citations, or the vast number of employees who depend on the
23 Appeals Board to uphold safety regulations and ensure a fair
24 interpretation of each issue that comes before them.

25 We feel that the Appeals Board needs Ms. Traeger
26 as Chairperson to ensure the efficiency as well as the integrity
27 of the Appeals Board and its members.

28 We respectfully ask you to confirm Ms. Traeger's

1 appointment to the Occupational Safety and Health Appeals Board
2 and allow her to continue her good work. Thank you.

3 CHAIRMAN PERATA: You want to take that home with
4 you, or take her home with you.

5 MS. TRAEGER: It's much better than anything I
6 could have said.

7 CHAIRMAN PERATA: Thank you.

8 Anybody here in opposition to the appointee?

9 Seeing none, we have motion to approve.

10 Secretary, please call the roll.

11 SECRETARY WEBB: Ashburn.

12 SENATOR ASHBURN: Aye.

13 SECRETARY WEBB: Ashburn Aye. Bowen.

14 SENATOR BOWEN: Aye.

15 SECRETARY WEBB: Bowen Aye. Battin.

16 SENATOR BATTIN: Aye.

17 SECRETARY WEBB: Battin Aye. Perata.

18 CHAIRMAN PERATA: Aye.

19 SECRETARY WEBB: Perata Aye. Four to zero.

20 CHAIRMAN PERATA: Congratulations.

21 MS. TRAEGER: Thank you very much.

22 [Thereupon this portion of the
23 Senate Rules Committee hearing
24 was terminated at approximately
25 1:45 P.M.]

26 --ooOoo--
27
28

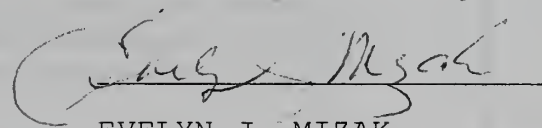
CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of August, 2005.


EVELYN J. MIZAK
Shorthand Reporter

APPENDIX

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CALIFORNIA LEGISLATURE

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VICE-CHAIR

ROY ASHBURN

DEBRA BOWEN

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GREGORY SCHMIDT
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KEITH FELTE
DEPUTY EXECUTIVE OFFICER

PAT WEBB
COMMITTEE ASSISTANT

SENATE RULES COMMITTEE

DON PERATA
CHAIRMAN

July 19, 2005

Deborah S. Malumed, M.D.
2809 East First Street
Long Beach, CA 90803

Dear Dr. Malumed:

As you know, the Senate Rules Committee will conduct a confirmation hearing on your appointment as a member of the Community College Board of Governors on August 25, 2005. We request that you appear. The meeting will begin at 1:30 p.m. in Room 113 of the State Capitol.

Following are questions we would like you to address in writing prior to the hearing. The answers to these questions will give us some basic information in advance so that senators might conduct a more informed discussion with you at the hearing. Please have this information in our office by August 10, 2005.

1. *Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the Board of Governors?*
2. *The community college system operates under a bilateral governance structure where the Board of Governors and the 72 locally elected boards of trustees share governance responsibilities for the system. What do you believe is the appropriate role and scope of authority for the Board of Governors and for the local governing boards?*
3. *The community colleges face significant challenges because of the many missions they perform for a diverse and growing student body. How can the community colleges best meet the enrollment demands of a growing population with limited resources?*
4. *While the primary mission of the community colleges is to offer academic and vocational instruction to recent high school graduates and adults returning to*

school, they also provide education and training for incumbent workers and instruction in basic skills, English as a second language, and a variety of other adult noncredit instruction..Do you believe the missions of the community college have become too diverse? Should there be priorities for the delivery of certain programs and courses? How should priorities be established?

5. *What do you believe should be the key features of a student fee policy for community colleges? What role should the Board of Governors play in setting student fee policies?*

Please direct your responses to Nettie Sabelhaus, Rules Committee Appointments Director, Room 420, State Capitol, Sacramento, CA 95814.

Sincerely,

A handwritten signature in dark ink, appearing to read "Don", with a stylized flourish at the end.

DON PERATA

DP:MG:dc

August 12, 2005

Deborah S. Malumed, MD
2809 East First Street
Long Beach, CA 90803
562-439-7909
562-439-2939
DMalumed@aol.com

The Honorable Don Perata
Senate President Pro Tempore
Chair, Senate Rules Committee
State Capitol, Room 400
Sacramento, CA 95814

Dear Senator Perata,

Thank you for the opportunity to share some of my thoughts with you and the Senate Rules Committee. I look forward to meeting you on August 25, 2005.

Response to Question No.1:

Goals that I hope to accomplish while on the Board of Governors:

- 1) I want to ensure that students, faculty, and staff have a viable community college.
- 2) I hope to make well informed decisions when implementing regulations derived from statutes passed by the Legislature.
- 3) I will evaluate the work done by the Chancellor and the System Office. I will base this on their support of, and assistance to, local districts.
- 4) As a physician, I know the importance of nurses and other allied health care workers. I plan on strongly supporting programs that educate and train students in these fields.
- 5) When I joined the Board, the Strategic Planning process had just begun. I look forward to shaping and implementing the final plan.
- 6) I will stay in touch with local districts to determine how they comply with regulations coming from the Board of Governors and to the maximum extent, I will advocate for local control.

Response to Question No.2:

The Board of Governors is an appointed regulatory board and has the responsibility for

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oversight of compliance of local districts to regulations. It also has certain support functions in assisting local districts in their ability to comply, such as, assistance with the State Architects Office. The Board interacts with state and federal officials and other state organizations, and selects a Chancellor. District Boards are governance boards selected by constituent groups to whom they are responsible for oversight of taxpayer monies, to provide appropriate programs of education for their communities. They are subject to compliance with the regulations as interpreted by the Board of Governors.

These regulatory, and oversight functions of the Board of Governors that I have just described, must complement our statewide leadership role. In that role, it is appropriate for the Board to provide general policy direction to the colleges, and advice to the Legislature and the Administration.

Response to Question No.3:

We need to help the colleges to be creative in partnering with community based organizations. They need to identify resources such as, grants from trade associations and businesses. Businesses will partner with the Community Colleges when the colleges show them the value of the training and education that the students achieve. For example, Sutter Health has made a long-term, multi-million dollar commitment to the Los Rios Community College District to increase the number of nursing and other health care professionals. There are many other examples like this that need to be replicated statewide. We know that our colleges are appreciated by their local communities, and we need to help them use that good will to leverage additional resources.

Another example community colleges can use to meet enrollment demands of a growing population is through seamless education. In my city of residence, Long Beach, the K-12 schools, Long Beach City College, and Cal State University Long Beach are all working together.

The Board of Governors also needs to continually monitor the effects of regulations on local districts and assure that compliance to regulations are not causing undue hardship on local districts in fulfilling their missions. If we need to review our regulations to relieve the burden on the colleges, we should do that, and we must do it in a way that complies with the intent of the statutes that required those regulations.

We must strive to show all of our faculty, both part-time, and full-time, that they are key to our colleges' success. Having a strong faculty that cares about the students is invaluable. The part-time faculty is vitally important, because they bring a wealth of practical experiences to the classroom.

Response to Question No.4:

I don't believe that the mission of the community colleges has become too diverse. Our state has diverse needs. By listening to the local trustees, and the organizations that represent systemwide interests, we can determine statewide priorities where appropriate,

but I believe that the priorities should be established by local districts to meet their local needs. We want to ensure that they have the resources needed for their individual communities.

Response to Question No.5:

Unlike the UC and CSU systems, fees for community colleges are set by the Legislature and the governor through the state budget process, and because of budget cuts, fees have increased dramatically. This has resulted in many lost opportunities for some of our neediest students. I believe that it is now time that we review how various fees are determined. We may be at a point where the Board of Governors should be given the authority to set the student fees. We need a thorough discussion and analysis to develop a long-term plan for logical incremental increases or decreases of fees. Students need stability in order to plan for their future, and a change in fees should not be random or of a magnitude to cause hardship to entering or continuing students.

Again, thank you for the opportunity to discuss my interests and goals for the community colleges. I look forward to the confirmation hearing on August 25, 2005.

Sincerely,

Deborah S. Malumed, MD

MEMORANDUM

To: Nettie Sabelhause, Rules Committee Appointments Director
 From: Barbara Gothard
 Date: August 8, 2005
 Re: Responses

As per the request of Senator Don Perata, Chairman, Senate Rules Committee, listed below are my responses to the questions posed in his July 19, 2005 letter as preparation for the up coming Senate Rules Committee Confirmation hearing for the Community College Board of Governors on August 25, 2005.

1. Brief statement of goals. What do you hope to accomplish during your tenure as a member of the Board of Governors?

During my tenure as a member of the Community College Board of Governors my goal is to participate fully in the policy-setting governance of the Community College system to ensure that we provide the kind educational experience that will enable our students to be gainfully employed and contribute significantly to their communities. In a system which is the largest workforce provider in the state and which offers nearly 200 degree and certificate programs, I consider it to be incumbent upon me, as a member of the Board of Governors, to ensure that the community colleges have the flexibility to strengthen our economy by adapting programs that are responsive to changes in the economy and the resulting needs of employers. The workforce development role of the community college system will continue to be a key component in California's economy, present and future. Therefore, my goal is also to utilize the combination of my educational, corporate and non-profit experience to bring my unique perspective to the challenges and opportunities community college students are likely to encounter in today's business environment.

2. The community college system operates under a bilateral governance structure where the Board of Governors and the 72 locally elected boards of trustees share governance responsibilities for the system. What do you believe is the appropriate role and scope of authority for the Board of Governors and for the local governing boards?

As I understand the present organizational structure of the community college system and given the size of the system, the role that currently resides with the Board of Governors to govern from a macro or global perspective, and combined with the role of the 72 locally elected boards, provides a balanced approach to governance. In a system as large as the community college system it would, it seems to me, be a difficult governance challenge without the input and consultation with the locally elected boards. Further, that the local community college districts have such strong ties to their local communities, which is reflected in the fact that nearly every bond measure put to the voters in the local communities has passed. This is affirmation of the local communities' knowledge about their community colleges and the benefits received. In the corporate multi-national sector the phrase "think locally act globally" is often used and, it seems to me, that this

could apply to the current structure of the community college system. Specifically, the policy setting role of the Board of Governors, the system offices provision of leadership and technical assistance to the colleges and the local district management fits this description.

Further, and this reverts to my response to Question #1 regarding workforce development, the relationships between community colleges, local business and community based organizations is crucial to the success of students landing good paying jobs. This need is evidenced by the fact that: 1) the community colleges are preparing many more transfer-ready students, 120,000, than the 70,000 slots available at UC and CSU; and 2) the community colleges are also serving approximately 20 times more students who are preparing for the workforce or learning basic skills for the next step in their vocational or educational career path. Therefore the current structure as outlined in the Joint Statement of September 1999 appears to be the appropriate framework.

3. The community colleges face significant challenges because of the many missions they perform for a diverse and growing student body. How can the community colleges best meet the enrollment demands of a growing population with limited resources?

The current strategic planning process for the community college system is the best starting point for determining how to address the challenges faced by meeting the enrollment demands of a growing population with limited resources. The outcome of the strategic planning process will provide the Board of Governors with a framework and a new set of priorities, which includes the present backdrop: the community colleges receive the least amount of state funding per student and community colleges are the most efficient users of the public education dollar. In fact, community college students receive affordable, quality education and, it has been demonstrated, that community college students, after transferring to a UC or a CSU, perform as well as the native students.

In addition, the community college system appears to be an efficient system serving as the point of access to higher education for millions of students each year. However, one of the things that the Board of Governors may need to consider is the effect on the community colleges to deliver on their promises when funding is lowered or flat lines. This has the potential to result in the reduction of class offerings. Hopefully, the results of the strategic planning process will enable the Board of Governors to continue to emphasize one of the main missions of the community colleges, which is to provide workforce development for our students. The Board of Governors should then in a better position to examine the allocation of current resources and newly committed funding, determine what current resources are being put against the new set of priorities, and perhaps start a reallocation process of current funds while making recommendations, where appropriate, for securing additional funds. In critical times like the current financial climate and the demands to meet the needs of a growing and diverse student body, it may be necessary to look at non-traditional ways of allocating the currently budgeted resources toward the greatest needs.

4. While the primary mission of the community colleges is to offer academic and vocational instruction to recent high school graduates and adults returning to school, they also provide educational training for incumbent workers and instruction in basic skills, English as a second language, and a variety of other adult noncredit instruction. Do you believe the missions of the community college have become too diverse? Should there be priorities for the delivery of certain programs and courses? How should priorities be established?

The issues raised in this set of questions are likely to be the most challenging issues that the Board of Governors will have to face in the near future. However, as the strategic planning process reaches its conclusion, it is my assumption that some of these issues will be addressed via the priority-setting phase and I would not want to presume nor preempt the outcome of the planning process.

With regard to the diversity of the missions of the community college, our course offerings are likely to reflect and be in response to the needs of our student population. Therefore we have to be cognizant of and prepared to address the changing elements in our society even if it means challenging the status quo. Simultaneously, we should be aware of the requirements of business and industry in this ever-changing global marketplace and increasingly engage them as partners in meeting these evolving needs. In addition, we should explore ways in which community college faculty can participate in programs that will increase their preparation for the changing aspect of our society. Our obligation as a governing board is, it seems to me, to set policies that will prepare our students for four-year, and beyond, institutions, the world of work and community service. In addition, the Board of Governors should ensure that the system develops and maintains flexibility within these policies that will enable the community colleges to adapt as the demands of our students evolve.

5. What do you believe should be the key features of a student fee policy for community colleges? What role should the Board of Governors play in setting student fee policies?

The key features of a 'student fee' policy for community colleges should adhere as closely as possible to the policies set out in the Higher Education Master Plan of 1960, specifically the requirement for "junior colleges (community colleges) to be 'tuition free' to all State residents". I recognize that in today's economic climate 'tuition free' may not be possible and that our system has the lowest fees in the nation. However, as the diversity of the population and their economic status changes, we as a governing body should be cognizant that markedly increased fees during times of economic downturn can result in enrollment drops due to fewer course offerings at a time when students most need to learn job skills or retrain in alternative skills.

Additional hurdles in the fee setting process include: 1) the disparity between the way in which the community colleges versus UC and CSU have input over their fees; 2) the competition between k-12 and the community colleges for Prop 98 funds; and 3) the way the community colleges' fee revenue is calculated in the overall budgeting process. If my

understanding is correct, it would seem that the Board of Governors could provide input on the fee structure to the legislature and the Governor, who establish the fees.

I also recognize that an examination of the practice of the State to recover almost 100% of enrollment fees and have them revert back to the State General Fund rather than with the community colleges and a reduced fee structure may be a difficult argument to articulate. However, a thorough examination of the costs of education and an appropriate level of student fees should be an integral element in the future governance of the community college system.

1. **Please provide us with a brief statement of goals. What do you hope to accomplish during your tenure as a member of the Board of Governors?**

As a member of the Board of Governors I will work to increase the role of the community colleges in workforce development particularly in career fields where California has critical shortages of trained and qualified workers. Additionally, I plan to work with local community colleges to assist them in expanding their efforts to train and develop the local workforce and assist in the attraction of high paying jobs to California. My other goals include continuing the efforts for equalization funding across the system, assist in finalization of the system's first strategic plan and participate in its implementation and increase accountability by furthering efforts to monitor and measure student progress and outcomes.

2. **The community college system operates under a bilateral governance structure where the Board of Governors and the 72 locally elected boards of trustees share governance responsibilities for the system. What do you believe is the appropriate role and scope of authority for the Board of Governors and for the local governing boards?**

I view the scope of authority for the Board of Governors is to set the mission of the community college system and manage it's operation, set minimum standards for local districts to receive state resources and monitor the prudent use of those resources, conduct system-wide research and report results on the fiscal and educational effectiveness of local districts, provide technical expertise to local districts with fiscal or management challenges, work with local districts so they can participate in the formation of system policy and direct the formation of new or reorganization of existing districts.

I view the scope of authority of local districts is to set the educational priorities of the local district to meet community educational needs, and set the related academic standards; oversee district management and employment functions, provide comprehensive and locally tailored student support services, devise local long-range facility and educational needs and determine the need for local bond elections, participate in the formation of system-wide policy and manage the receipt and administration of gifts, grants and scholarships.

3. **The community colleges face significant challenges because of the many missions they perform for a diverse and growing student body. How can the community colleges best meet the enrollment demands of a growing student population with limited resources?**

Senate Rules Committee Questions
August 9, 2005
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I believe that setting clear goals and priorities, as we are doing through the system strategic plan, is the best way for the community colleges to meet enrollment demands of the growing student population with limited resources. Additionally, I believe by being proactive and identifying and acting on trends we can stay ahead of the needs and demands of our diverse student population. This will eliminate the need for spending large quantities of resources to "catch up" after the critical demand is upon us.

- 4. While the primary mission of the community colleges is to offer academic and vocational instruction to recent high school graduates and adults returning to school, they also provide educational and training for incumbent workers and instruction in basic skills, English as a second language and a variety of other adult noncredit instruction. Do you believe the missions of the community college have become too diverse? Should there be priorities for the delivery of certain programs and courses? How should priorities be established?**

I do not believe that the missions of the community college have become too diverse. I think we need to set priorities for the delivery of certain programs and courses and I believe that begins with identifying programs and course needs on a state-wide basis and also working with local districts to identify local needs and then working together via the shared governance process to monitor the priorities and adjust them as needed. For example, on a statewide basis, our nursing shortage has focused system attention on expanding nursing programs in cooperation with local districts. In the Inland Empire, where I reside, local colleges are focused on expanding hospitality management programs as we have a shortage of trained personnel for this important industry.

- 5. What do you believe should be the key features of a student fee policy for community colleges? What role should the Board of Governors play in setting student fee policies?**

The key features of a student fee policy are creating a policy that is reasonable and predictable. A policy with these two features will give students a clear picture for financial planning in order to achieve personal educational objectives as well as prevent "sticker shock" for new or returning students, possibly discouraging them from pursuing higher education opportunities. I believe the Board of Governors in conjunction with the legislature should work together to devise a system that is reasonable and predictable but is also sensitive to the budget constraints faced by the state. Additionally, I believe the creation of a fee policy should also include a companion policy on student financial aid. It is these aid programs that will be the key in maintaining access to higher education in a time of increasing fees.

LORETTA DOON
Commissioner
California State Lottery

Responses to Senate Rules Committee Confirmation Questions

1. WHAT DO YOU HOPE TO ACCOMPLISH DURING YOUR TENURE AS A MEMBER OF THE LOTTERY COMMISSION? WHAT GOALS DO YOU HAVE FOR THE COMMISSION AND HOW WILL YOU ACCOMPLISH THEM?

As a member of the California State Lottery Commission, I hope to assist in improving the Lottery's relationship with the education community. The Lottery exists to enhance funds to support education. It is important that the Lottery have the support of the education community; i.e., educators, administrators, parents, students, and others. Thus, I intend not only to educate and publicize the benefits of the Lottery to the public and the education community, but I also hope to explore and seek avenues by which the Lottery can increase sales, which, in turn, will allow an increase in supplemental funding for education.

To accomplish these goals, I will work with Lottery staff in exploring all options available to increase Lottery sales. I will work with the Lottery Director in making contacts with educators and other education-related parties in order to better communicate the benefits of the Lottery's allocation to public schools and universities in California, and I will encourage projects and programs to demonstrate the positive impact the Lottery has made, and will continue to make, to enhance public education in California.

As a Certified Public Accountant, I intend to review the financial reports and statements of the Lottery to assure that appropriate audit, review, and control processes continue to be strictly adhered to.

2. WHAT ARE THE BENEFITS TO CALIFORNIA IN JOINING A MULTI-STATE GAME? DO YOU HAVE ANY CONCERNS IN DOING SO?

By creating a game with a population base of some 154 million, jackpots will grow faster and become bigger. Since there are many people who only play lotto games when the jackpot reaches a certain threshold, sales definitely grow as the size of the jackpot grows. In California Mega Millions, we anticipate having 18 jackpots of \$100 million or more in one year alone, four of which will break the \$200 million mark.

Also, by creating a game with draws on Tuesday and Friday, instead of the Wednesday and Saturday draws in SuperLOTTO Plus, there are more opportunities for people to conveniently play one of the big jackpot games the Lottery will now offer.

As such, total Lottery sales will grow next fiscal year as a result of California Mega Millions by some \$300-\$500 million. This means increasing revenues going to the Lottery's beneficiary – public classrooms throughout the State of California.

3. WHAT DO YOU THINK WILL BE THE EFFECT ON SUPERLOTTO PLUS WITH THE INTRODUCTION OF MEGA MILLIONS? WILL THERE BE A SHIFT FROM SUPERLOTTO PLUS TO MEGA MILLIONS? WHAT WILL BE THE NET EFFECT FOR CALIFORNIA?

Lottery staff briefed all Commissioners on the impact Mega Millions would have on SuperLOTTO Plus sales. Because we may see an initial drop in SuperLOTTO Plus, I also looked closely at whether California Mega Millions would provide more money to California schools. I believe the Lottery Commission must make sure that our decisions positively impact the profits going to public education.

The total impact on sales would be a **net** increase of \$300-\$500 million – the large sales of California Mega Millions with its large jackpots will more than make up any shifts in sales of SuperLOTTO Plus to the new game. While between \$250 million and \$350 million in SuperLOTTO Plus sales may shift to Mega Millions, total sales for the new game is anticipated to be in the \$650-\$750 million range annually - resulting in a net increase in total sales.

4. WHAT ARE THE ODDS THAT CALIFORNIA PLAYERS WHO SELECT THE CORRECT FIRST FIVE NUMBERS WILL RECEIVE A PAYOUT LESS OR MORE THAN PARTICIPANTS IN THE ELEVEN OTHER STATES?

Based on how pari-mutuel payouts work, I believe that half the time, players will receive more than the fixed prize amounts paid in other states, and half the time they will receive less.

5. IN ADDITION TO JOINING THE MULTI-STATE GAME, HAS THE COMMISSION CONSIDERED OTHER METHODS TO INCREASE LOTTERY PROCEEDS? DO YOU HAVE ANY SPECIFIC PROPOSALS OR IDEAS TO INCREASE LOTTERY PROCEEDS?

Lottery staff has briefed the Commission on several options to increase Lottery proceeds. I believe we should explore adding additional retail outlets and businesses in which to promote the sale of Lottery products. California should consider what other states are doing and borrow ideas as where it is best to market our games.

Also, if California Mega Millions is as successful as we hope, consideration should be given to seek legislation to allow the Lottery to offer bigger jackpots, thus increasing the number of people playing.

6. DO YOU THINK THAT THE RELATIVE UNPOPULARITY OF CALIFORNIA'S LOTTERY IS SOMETHING THAT CAN OR SHOULD BE CHANGED? IF YOU BELIEVE THE POPULARITY CAN AND SHOULD BE CHANGED, WHAT ARE SOME OF YOUR IDEAS TO DO SO?

Based on annual sales of approximately \$3.33 billion this year alone, I don't believe that the California Lottery can be characterized as unpopular. I believe interest may be waning because SuperLOTTO Plus jackpots are not large enough to encourage players to buy tickets.

If our games, on-line and Scratchers, are to succeed we must raise the amount of money that can be won.

7. HOW HAS THE INCREASED PRESENCE OF INDIAN GAMING IN CALIFORNIA AFFECTED THE LOTTERY? HOW IS THE LOTTERY ADAPTING TO THIS INCREASED PRESENCE?

Indian gaming is one of a multitude of gaming options that Californians have to choose from. At this time, we have not been able to measure any impact on the Lottery.

8. IS THE LOTTERY ASSISTING PEOPLE WHO MIGHT BE PROBLEM GAMBLERS APPROPRIATELY OR SHOULD IT BE DOING MORE?

The Lottery has been proactive in addressing problem gambling. The organization administers a comprehensive Problem Gambling Program, which promotes a 1-800 HELP line number on all instant game tickets, on-line tickets, and in a Problem Gambling Brochure that is available at approximately 18,500 retailer outlets. Callers are connected directly to a trained counselor 24 hours a day, seven days a week.

Brochures about the Problem Gambling issue and specifically about the Help Line are at the 18,500 lottery retailers across the State. And, periodically, the Lottery uses its negotiated air time to run Public Service Announcements to create better awareness of the problem gambling issue and to have individuals or their loved ones get help for those who have a problem.

The Lottery also contracts with the California Council on Problem Gambling to maintain the 1-800 HELP line, and to provide literature, upon request, on how to detect signs of gambling addiction and resources for treatment. In addition to this contract, the Lottery is in partnership with the National Council on Problem Gambling, which coordinates an annual public awareness campaign that brings attention to this issue and resources for those impacted by problem gambling.

9. INFORMATION ABOUT PROBLEM GAMBLING IS NOT NOW DISPLAYED PROMINENTLY ON THE LOTTERY'S WEB SITE. DO YOU BELIEVE IT SHOULD BE MORE PROMINENTLY DISPLAYED?

The Lottery's web site provides extensive information on the behavior disorder known as Problem or Compulsive Gambling, both in describing typical behavior associated with problem gamblers and specific signs associated with problem gambling. Also included is information regarding how to survive problem gambling, which provides specific information regarding the Lottery's Help Line and what callers may expect from the services available 24 hours a day, 7 days a week.

Finally, the Lottery's web site also provides information for individuals who wish to help problem gamblers and a listing of state, national and international organizations which can assist in surviving a gambling problem.

10. SOME CONCERNED GROUPS HAVE ARGUED THAT LOTTERY TICKET SELLERS SHOULD BE REQUIRED TO DISPLAY THE LOTTERY'S BROCHURES ABOUT PROBLEM GAMBLING. WHAT ARE YOUR THOUGHTS ON REQUIRING THESE BROCHURES TO BE DISPLAYED AT LOTTERY SALES POINTS?

The Lottery's Problem Gambling Brochure is on display at the Lottery's 18,500 sales points.

JOHN MASS
Commissioner
California State Lottery

Responses to Senate Rules Committee Confirmation Questions

1. WHAT DO YOU HOPE TO ACCOMPLISH DURING YOUR TENURE AS A MEMBER OF THE LOTTERY COMMISSION? WHAT GOALS DO YOU HAVE FOR THE COMMISSION AND HOW WILL YOU ACCOMPLISH THEM?

My primary goal as a member of the California State Lottery Commission is to assist the California State Lottery (Lottery) staff in developing a vision and strategic plan to build lottery sales, and, thus, increase contributions to public education. While the Lottery's has continued to grow over the past 20 years, it has not reached its full potential; it is the fifth largest lottery in the country, but ranks 29th when compared to other state lotteries on a per capita basis. It is my goal to work towards elevating the Lottery to a plateau befitting the most populous state in the country and the world's fifth largest economy.

It is my opinion that we can learn a lot from other lotteries, including new structures for prize pay-outs and the accessing of new distribution channels, some of which require legislative approval to be augmented. I will make certain that we analyze such regulations carefully, and should regulatory approval be required, make such a recommendation to the legislature.

The key to accomplishing any goals will be a successful working relationship with the Director and his staff. As a Commissioner, I intend to work closely with the Lottery staff in developing a long-term plan to make California's lottery the model for all other state lotteries.

2. WHAT ARE THE BENEFITS TO CALIFORNIA IN JOINING A MULTI-STATE GAME? DO YOU HAVE ANY CONCERNS IN DOING SO?

California Mega Millions will be a game with a population base of some 154 million, translating into jackpots that will grow faster and become bigger. Since there are many people who play lotto games only when a jackpot reaches a certain threshold, sales definitely grow as the size of the jackpots grow. We anticipate having 18 Mega Million jackpots of \$100 million or more in one year alone, four of which will break the \$200 million mark.

The primary benefit to California in joining Mega Millions will be an increase in revenues. Total Lottery sales will grow next fiscal year as a result of California Mega Millions by some \$300-\$500 million, 34% of which will be earmarked for public education.

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3. WHAT DO YOU THINK WILL BE THE EFFECT ON SUPERLOTTO PLUS WITH THE INTRODUCTION OF MEGA MILLIONS? WILL THERE BE A SHIFT FROM SUPERLOTTO PLUS TO MEGA MILLIONS? WHAT WILL BE THE NET EFFECT FOR CALIFORNIA?

Large California Mega Millions jackpots will result in higher sales. The total impact on sales will be a net increase of \$300-\$500 million, making up any shifts in sales of SuperLOTTO Plus to the new game. While between \$250-\$350 million in SuperLOTTO Plus sales may shift to Mega Millions, total sales for the new game is anticipated to be in the \$650-\$750 million range annually - resulting in a net increase in total sales.

The Lottery Commission must continue to make decisions do not negatively impact profits going to public education. I intend to work closely with staff to assure that the Lottery's marketing, communication and promotional strategies work to minimize any sales decline in SuperLOTTO Plus.

4. WHAT ARE THE ODDS THAT CALIFORNIA PLAYERS WHO SELECT THE CORRECT FIRST FIVE NUMBERS WILL RECEIVE A PAYOUT LESS OR MORE THAN PARTICIPANTS IN THE ELEVEN OTHER STATES?

Because the Lottery Act requires pari-mutuel prize payouts, half the time players will receive more than the fixed prize amounts paid in other states, and half the time they will receive less.

5. IN ADDITION TO JOINING THE MULTI-STATE GAME, HAS THE COMMISSION CONSIDERED OTHER METHODS TO INCREASE LOTTERY PROCEEDS? DO YOU HAVE ANY SPECIFIC PROPOSALS OR IDEAS TO INCREASE LOTTERY PROCEEDS?

Commission members have been briefed on several options to increase Lottery revenues. In order to implement lottery industry "best practices" in California, it is essential that we seek higher prize payout legislation. Because players like to know exactly what they are playing for, fixed prize legislation would also provide another avenue towards higher sales.

6. DO YOU THINK THAT THE RELATIVE UNPOPULARITY OF CALIFORNIA'S LOTTERY IS SOMETHING THAT CAN OR SHOULD BE CHANGED? IF YOU BELIEVE THE POPULARITY CAN AND SHOULD BE CHANGED, WHAT ARE SOME OF YOUR IDEAS TO DO SO?

I wouldn't characterize California's Lottery as unpopular. Sales this year are approximately \$3.3 billion; a tremendous sales achievement for an organization limited in expanding the way it does business. The current prize fund requirements are set in statute and would

require legislative change to increase prize fund levels and allow fixed prizes. Current statute restrictions pertaining to prize payouts prohibit the Lottery from doing business in accordance with lottery industry "best business practices."

I believe that statutory restrictions should be thoroughly reviewed and recommended changes made to the Legislature. Higher prize and fixed prize payouts are essential if the popularity of our games, on-line and Scratchers, is expected to grow.

7. HOW HAS THE INCREASED PRESENCE OF INDIAN GAMING IN CALIFORNIA AFFECTED THE LOTTERY? HOW IS THE LOTTERY ADAPTING TO THIS INCREASED PRESENCE?

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regarding the Lottery's Help Line and what callers may expect from the services available 24 hours a day, 7 days a week.

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The Lottery's Problem Gambling Brochure is on display at the Lottery's approximate 18,000

Responses of Candice Traeger to Senate Rules Committee

June 22, 2005

Role and Responsibilities

Question #1, Part 1: Please provide us with a brief statement of your goals for the California Occupational Safety and Health Appeals Board.

Response to Question #1, Part 1:

The overall mission of the Appeals Board is to promote workplace safety through the consistent application of statutes and regulations, while processing Employer appeals of OSHA citations. In fulfilling that statutory mission, my personal goal is to create a work place environment at the Board that fosters efficiency, teamwork, and professionalism, where both staff and board members work together toward a common objective-promoting workplace safety and giving the public guidance.

Question #1, Part 2: As the employer representative on the Board, do you believe it is your role to be an advocate for employers or an impartial adjudicator of fact? Please explain.

Response to Question 1, Part 2:

The Board by statute is composed of three members. The statute (Labor Code section 148) requires that one member "shall" be from labor, one "shall" be from management and one "shall" be from the general public. Each Board member has the duty and responsibility to review the cases presented, reviewing the facts in a fair and impartial manner, to interpret that law, and to apply the law to the facts.

Although I was appointed as the "management representative" on the Board, I do not serve or act as an advocate for management. I am first and foremost an advocate for the Appeals Board as an institution, recognizing that its effectiveness can be measured, to some extent, by the respect it earns from labor, management, the public, and employees. It is my understanding, however, that the legislation creating the Board was specifically designed to bring differing perspectives to the Board. To the extent our perspectives are shaped by our experience, I did work for management. It should be noted, however, that I was not always a manager. I started my career as a clerical employee. In this regard I have a unique perspective; I was a member of the Teamster Union for nine years before I accepted a management position. Additionally, while in management I worked with the Teamsters to advance our common interests in the Legislature for seven years. The insight I have gained from these experiences allows me to understand and serve the interests of all parties to this process.

Question #2: What distinguishes the role of the Chairperson of the Board from the role of other Board members?

Response to Question #2:

There are two distinctions. Under statute (Labor Code section 148.2) the Chairperson is charged with the responsibility to supervise all personnel employed by the Board. This general delegation of supervisory authority places in the Chair the overall responsibility to ensure that the Board functions efficiently in terms of its day-to-day operations and that the Board conforms to a variety of personnel regulations including civil service rules and regulations and regulations of the Department of Personnel Administration.

There is also a more commonly accepted notion of what a Chairperson does and that is someone who functions as a "presiding officer of a meeting or an organization or committee." (Webster's Collegiate Dictionary, Tenth Edition.) In this sense, the Chairperson's function is to make sure that the Board's business is handled in an efficient manner with the ultimate objective of fulfilling its statutory directive to serve the public by hearing and determining appeals and to determine all other matters under the Board's jurisdiction in a timely manner. I believe that it is the Chairperson's responsibility to promote efficiency by promoting procedures that will help reduce backlogs and will remove unnecessarily cumbersome processes that serve only as roadblocks to the processing of the files and appeals.

The Appeals Board is a small agency. The Board members and the Executive Officer are the only managers. There are only two supervisors. Since any meeting of two of the three Board members may have implications under the public meeting laws, it falls upon the Chair of the Appeals Board to meet with staff, get feedback, and communicate policy.

The role of the Chair of this small agency is to be the team leader, role model, and pacesetter. To that end, as Chair, I conduct meetings with the Northern and Southern California support staff every other week. I have met with the ALJ's from each office separately and together. I have visited the Southern California Office and met directly with staff eight times since my appointment.

Question #3: The Rules Committee understands that Board member proceedings are not recorded in any fashion. Please explain why. Do you believe it is appropriate to record these proceedings? If so, what system will you implement?

Response to Question #3:

Board member proceedings, namely the public and closed sessions of the Board, are recorded by handwritten notes, taken by the Executive Officer. Such notes have always been considered the official method of recording Board meetings. When Board members entertain oral argument, those proceedings have always been recorded.

Responses of Candice Traeger to Senate Rules Committee

June 22, 2005

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In terms of the public and closed sessions of Board meetings, draft minutes are prepared from those handwritten notes and circulated to Board members for their approval. The minutes become final upon approval at the next regularly scheduled board meeting.

Since neither statute nor regulation provides guidance I checked with the Worker's Compensation Appeals Board, which does not utilize tape recordings, and the Unemployment Insurance Appeals Board, which uses tape recordings to prepare written minutes and then destroys the tape recordings. In addition, my experience while serving on private boards was that electronic tape recording was not used. The practice of tape-recording oral argument before the Board is expected to continue.

The Appeals Process

Question # 4: Please provide us with the following data for each of the last ten years:

- The number of appeal hearings conducted by ALJ's
- The number of petitions for reconsideration filed by a party to the action
- The number of ALJ decisions the Board has independently chosen to reconsider
- The disposition of these cases

Response to Question # 4, Part 1 (the number of appeal hearings):

(See Tab 1 for detailed chart on Board Performance)

1995= 368	2001= 469* Hiring Freeze (10-01)
1996= 603	2002= 520
1997= 634	2003= 240* 2 ALJ retirements (2-03 & 6-03)
1998= 532	2004= 110* 2 ALJ retirements (11-03 & 12-03)
1999= 512	2005= 103* Partial year (1-05 thru 5-05)
2000= 388	

Response to Question #4, Part 2 (the number of Petitions for Reconsideration filed):

(See Tab 2 for detailed chart)

Over the last ten years the numbers of Petitions filed by Employers has averaged about 40 a year. The average number of petitions granted by the Board, over the last ten years, is 62% with 2004 and 2005 slightly lower at 55% and 60%, respectively. The average number of Petitions by Employers that were denied, over the last ten years, has averaged 38% with 2004 and 2005 slightly higher at 45% and 40%.

Over the last ten years the numbers of Petitions filed by DOSH has averaged about 7 a year. The average number of petitions granted by the Board, over the last ten years, is 92% with 2004 and 2005 higher at 100% for both years. The average number of Petitions by Employers that were denied, over the last ten years, has averaged 8% with 2004 and 2005 lower at 0%.

Response to Question #4, Part 3 (the number of ALJ decisions the Board has independently chosen to reconsider):
(See Tab 3 for detailed chart)

1995= 1	2001= 4
1996= 7	2002= 0
1997= 14	2003= 1
1998= 2	2004= 2
1999= 16	2005= 7
2000= 0	

In 1997, 1999, and 2005, several cases concerning the same subject, same issues, or interpretation of the same safety order were reconsidered on the Board's own motion. Although this appears to create an anomaly in the numbers, it explains numbers that otherwise could be misconstrued.

In 2005, four of the seven cases reconsidered on the Board's own motion concern the application of financial hardship. Two cases (one of these cases involves both financial hardship and injury reporting requirements) are on injury reporting requirements.

Response to Question #4, Part 4 is included in Tab 4. It includes a brief summary and case disposition for reconsiderations on the Board's own motion over the last ten years.

Question #5, Part 1: What issues prompt you to reconsider an ALJ decision?

At the outset, it should be understood that if the Board votes to reconsider a Decision or Order of one of its Administrative Law Judges, it does not mean that Decision or Order will be reversed. It simply means the Decision or Order will not automatically become final. Instead, the Board will have time to independently review the evidentiary record and the law and then either adopt, reverse, or modify the Decision or Order of the ALJ.

That said, each party to an Appeals Board proceeding has 30 days to request reconsideration of a decision. The parties can petition based on the following grounds as set forth in § 390.1 of the Board's regulations:

- 1) That by the order or decision the Appeals Board acted without or in excess of its powers;
- (2) That the order or decision was procured by fraud;
- (3) That the evidence received by the Appeals Board does not justify the findings of fact;
- (4) That petitioner has discovered new material evidence which the petitioner could not, with reasonable diligence, have discovered and produced at the hearing;
- (5) That the findings of fact do not support the order or decision.

If the parties raise such grounds, I would be prompted to reconsider an ALJ Decision. As noted above, that does not mean I would be voting to change the ALJ Decision. It would only mean that grounds had been raised that required the Board itself to take a look at it.

The Board itself also has a 30 day period in which to, on its own action, and seek reconsideration. (8 Cal.Code Regs., §390.2.) There might be a number of reasons for voting to reconsider an ALJ Decision on the Board's own motion. Principal among those are cases in which an ALJ has not correctly interpreted or applied safety orders, statutes, or Appeals Board precedents. Also, though ALJ decisions are the law of the case they decide only and have no precedential effect, if ALJs are interpreting the same safety orders differently, the Board may wish to clarify the meaning of the safety order by reconsidering an appropriate case and issuing a precedential decision of its own. Whether or not the parties are dissatisfied, it is incumbent upon the Board to resolve such disputes.

In short, my decision to vote to reconsider is made upon the same grounds for each case. Is there a need to clarify existing precedent? Does the decision deviate from existing precedent, or did the Administrative Law Judge misinterpret or misapply law or regulation? Is there insufficient evidence to support the Administrative Law Judge's decision? Would reconsideration of this particular decision possibly result in a clarification of the law for the Division and the Employer community and will such clarification enhance employee safety.

Question #5, Part 2: Critics contend that you have acted repeatedly to reconsider ALJ decisions which uphold safety violations and penalties where employer did not petition for reconsideration. What is your response to this contention?

Response to Question #5, Part 2 (Tab 5 for detailed analysis):

The assertion is simply wrong.

For the first five months of 2005, the Board has reviewed 622 ALJ Orders, representing the Appeals of 1237 citations. The Board has reviewed 41 ALJ Decisions, representing 110 citations.

During the time I have been Chair in 2005 the Board has, on its own initiative voted to reconsider 7 ALJ decisions. Four of those cases concern the same issue, namely, whether and/or to what extent may an ALJ provide monetary relief when it is alleged the penalties will cause financial hardship. There is no dispute that, almost without exception, the ALJ's have interpreted current Board decisional law as precluding financial hardship relief. The Labor Member and the Public Member, who created that decisional law and the Board's legal counsel, say that result was not intended. In two of those four cases, the vote for the Board to reconsider the ALJ Decision was unanimous. In two other cases, the vote was 2-1. Since the Board's standards are clearly not

understood by the ALJ's or agreed upon by the Board members themselves, reconsideration was clearly mandated in these cases.

In one other case where I supported the vote to reconsider the ALJ decision, it was a case of first impression interpreting a new provision of the Labor Code. The vote to grant reconsideration was unanimous.

Two other cases where reconsideration was granted on the Board's own motion raised significant questions about the interpretation of regulations and the Labor Code. In those cases, the Employer did Petition for Reconsideration and the Employer's petitions were granted. Each Employer Petition was independently granted, by a unanimous vote of the Board. Thus, although I was prompted to seek reconsideration, it would have been granted anyway. (See Tab 5)

Again, it must be noted that the mere fact that the Board has voted to reconsider an ALJ decision does not mean that ALJ Decision will be altered in any material way. Moreover, in five of the seven cases, neither I nor the Board has voted to reconsider whether a safety order was violated.

Employment of Staff

Question #6, Part 1: Since your appointment as Chairperson of the Board, how many staff persons have been employed?

Response to Question #6:

During my tenure as Chairperson there have been 6 new staff employed. They are in the following positions: executive secretary, senior legal typist, office technician, office assistant, summer youth aid and a retired annuitant. In addition, a Hearing Officer I was promoted to the vacant Hearing Officer II position.

Ultimately, each employment decision was mine, but the process used depended upon the position being filled.

- 1. The Executive Secretary appointment was made after an interview conducted by Board Member Marcy Saunders, Executive Office Janet Eagan, and myself. The two Board members concurred on the selection.*
- 2. The office technician, office assistant, and summer youth aid decisions were delegated to the supervisory staff. Janet Eagan and Manuel Melgoza interviewed candidates as per past Board practice. The summer youth aid had previously worked at the Board and was not interviewed, she will remain for three months.*
- 4. The retired annuitant, Administrative Law Judge Dennis Sullivan, who had previously worked for the Board for close to 18 years was hired after consulting with the only supervising ALJ at the time, Presiding ALJ Barbara E. Miller, and Board Member*

Gerald O'Hara. Member Saunders was also advised, and agreed that he was a good choice.

5. *I made the Decision to promote Manuel Melgoza to the Hearing Officer II position after Executive Office Janet Eagan and Presiding ALJ Barbara E. Miller and I conducted interviews, and Board Member O'Hara concurred with the decision.*

I have been advised that the historic practice at the Board has been contingent upon whether the Board had a duly appointed Chair. When there has been an incumbent in that position, the model was collegial. Employment decisions were discussed but no formal Board action was taken, and the Chair made the ultimate decision without controversy. In most cases support staff hiring was effectively delegated to the appropriate supervisor or manager. This information was confirmed by the executive officer, who has been with the Board for more than fifteen years.

In keeping with the Board's past practice when it has a Chair, I have advised and consulted with the Board members concerning personnel matters.

It should be noted that, as a small agency, the Appeals Board does not have its own personnel or labor relations officer. Every employment decision is made with the assistance and approval of the Department of Industrial Relations Personnel (DIR Personnel) who is consulted to ensure compliance with all civil service rules and regulations.

Question #7: There have been concerns raised to the committee that civil service rules and regulations are not being followed in the Board's employment actions. Please explain whether there have been any deviations for civil service rules and regulations and, if so, why.

Response to Question #7:

To the best of my knowledge there has never been any deviation from civil service rules and regulations with regard to employment practices since I arrived. There was one instance, however, where the Board was advised by DIR Personnel that an individual, Administrative Law Judge Manuel Melgoza could be promoted to the previously mentioned Hearing Officer II position as a "promotion in place." We were later advised by DIR Personnel that determination was incorrect so the process was stopped, the position advertised and interviews conducted.

The decision to promote Administrative Law Judge Melgoza was made since he was the most qualified candidate. He was also in the first rank of the eligibility list. Consequently, the appointment did conform to all civil service rules and regulations.

Role of the Executive Officer

Question # 8: Have you deputized Executive Officer Janet Eagan to vote on issues before the Board? If so, how often and under what circumstances was this done? Was the executive officer deputized to execute the duties of an absent Board member or a vacant Board position? Is deputizing the executive officer consistent with the historical practices of the Board?

Response to Question #8:

(See Tab 6 for detailed analysis and Tab 7 for Board minute transcriptions)

Historically, the Board has authorized the executive officer to vote in the event of an absence (2 times), a vacancy (5 times), an absence coupled with a vacancy (1 time) and a vacancy coupled with a recusal (5 times). On four occasions the authorization has been "blanket" or until such time as a new member was appointed by the governor. The total amount of the time covered under blanket authorizations is eight years and three months. (See Attachment 3, Tab 1 & 2 for complete chart of authorizations, the detail on each, the length of time, the reasons for the authorizations and Board Minute transcriptions.)

I have authorized our executive officer to vote because of a vacancy (2 times) and because of a vacancy accompanied with a recusal (1 time) for a total of three specific occasions. In each of the occasions, I authorized the executive officer to vote only in cases where the Board's ability to act on its own motion would lapse. (The Board only has 30 days to act or the judgment becomes final.) Prior to the delegation, I advised the executive officer to use her own discretion in determining how to vote on a particular issue. On two occasions, the executive officer voted with me and in one instance she voted in opposition to my position.

It should be noted that prior to my arrival the executive officer was authorized to vote on two decisions after reconsideration, which have no legal timeframe and did not require action prior to the appointment of another member.

Writ of Mandate

Question # 9: Please explain why this directive was issued and in light of the writ of mandate whether you overstepped your authority.

Response to Question #9:

The February 11, 2005 memo (See Tab 8) in summary, provided that the Board's meeting binders should stay at the Board's office, should be locked up after business hours or when not in use and should be checked out if being taken home over the weekend and made provision for longer check out period.

I issued this directive for two reasons: first, all Board members, including myself, were subject to the order of the Labor Secretary (See Tab 9) that we had to report to work at the headquarters office of our respective agencies, and as Chair it fell to me to enforce that directive and, secondly, I believed that a written procedure regarding the

protection of some confidential, non-public Board materials would protect the integrity and confidence of the materials within the binders.

My responsibility as Chair includes making the Board's operation efficient and ensuring that appellants get due process under the law. When I became Chair there was a significant backlog in getting appeals to hearing. I believe that work culture starts at the top. The direction, initiative and leadership must come from management and must be shown by example; here, by the three member Board. When demanding increased productivity and accountability from staff, management should also be visibly accountable.

I also believed that a procedure for protecting Board materials was long overdue. Some of the information contained in the Board meeting binders was confidential and in draft form waiting Board review and approval at the board meeting prior to public dissemination, other materials (i.e.; personnel issues) would not be disseminated whatsoever. I believed that there should be some predictability and integrity as to procedures the Board uses over how and where the information was maintained and disseminated. I did not believe that the prior practice of allowing the binders to be freely taken from the office was the best way to protect that information. I also believed that it was more effective and efficient to maintain the integrity of the materials since amendment, supplements, or new materials are added almost daily.

The court held that the February 11, 2005, memo violated California Government Code section 1850. Section 1850 provides: "Every officer is entitled to the possession of all books and papers pertaining to his office, or in the custody of a former incumbent by virtue of his office." This provision was made part of the Government Code in 1943 and was derived from the prior Political Code of 1872. Since the February 11, 2005, memo did not prohibit the board members from reviewing the binders and allowed the board members to remove the binders from the office, I believed that there was no violation of Government Code section 1850. The court disagreed and I accept that decision. I am following the court's guidance and will not appeal the decision.

Unfortunately, my directive was not productive and instead of creating a dialogue and providing protection and guidance it produced litigation. The court said I had overstepped my authority and I accept and am following the court's ruling and will not appeal the decision.

I would like to conclude by saying that I have the greatest respect for the working men and women of California, their safety and health, and the labor organizations that represent them. Nothing I have done was done with the intent of attacking organized labor or of attacking a Board member. I was trying to improve the Board's performance of its duties, as explained above. And, I am very sorry if my actions have been perceived otherwise. If confirmed, I can and will work to overcome those misperceptions and establish, with both of the other Board members, the kind of collegial relationship that will enable us to work together pleasantly and productively.

OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD ANSWERS FOR SENATE RULES - QUESTION #4

QUESTION #4, PART 1: NUMBER OF APPEAL HEARINGS IN THE LAST TEN YEARS

YEAR	TOTAL # OF APPEALS DOCKETED	TOTAL # OF APPEALS DISPOSED OF	BACKLOG OF APPEALS	% OF APPEALS DISPOSED OF	APPEALS DISPOSED OF PER MONTH	HEARINGS BY ALJs
				% EFFECTIVE		
1995	4741	3679	1062	78%	307	368
1996	4067	4020	47	99%	335	603
1997	3623	4531	-908	125%	378	634
1998	4336	4839	-501	112%	403	532
1999	3490	4655	-1165	133%	388	512
2000	4555	3530	1025	77%	294	388
2001	5255	4265	990	81%	355	469
2002	5367	4336	1031	81%	361	520
2003	5235	3434	1801	66%	286	240
2004	4762	3656	1106	77%	305	110
2005	1850	1719	131	93%	344	103

LEGEND

(SEE ATTACHMENT 1 FOR 1995-2005 OSH APPEALS BOARD STATISTICS)

APPEALS DISPOSED OF BY MONTH: THE NUMBER OF APPEALS DISPOSED OF DIVIDED BY THE MONTHS IN A YEAR - 2005 IS DIVIDED BY 5 BECAUSE THERE IS ONLY 5 MONTHS OF DATA SO FAR

BACKLOG OF APPEALS: THE DIFFERENCE BETWEEN THE NUMBER OF APPEALS DOCKETED AND THE NUMBER OF APPEALS DISPOSED OF IN 1997-99 DISPOSED OF MORE APPEALS THAN WERE INCOMING

OSH APPEALS BOARD STATISTICS FOR 1995

	APPEALS	APPEALS DECIDE	DOSH	EMPLOYER BOARD	TOTAL	RECONS	RECONS	RECONS	RECONS	WRITS	WRITS			
MONTH	DOCKETED	ORDERS	PRECISIONS	CLOSED	STIPS/DISPOSAL	WITHDRAWN	DISMISS	DISPOSAL	DOCKETED	CASES	DOCKETED	CASES	FILED	ISSUED
JAN	315	175	15	98	21	12	321	5	5	3	1	0	0	0
FEB	361	120	20	66	6	3	209	8	4	2	2	0	0	0
MAR	418	190	21	83	53	13	360	6	4	6	10	0	0	0
APR	404	162	59	16	14	13	264	7	2	2	1	0	0	0
MAY	583	143	30	92	27	17	309	9	5	10	4	0	0	0
JUN	461	275	78	121	28	0	502	5	4	7	5	0	0	0
JUL	426	119	39	147	14	33	352	13	6	10	4	1	0	0
AUG	344	183	33	60	24	2	302	19	10	4	3	0	0	0
SEP	399	116	23	80	30	20	269	8	4	1	1	1	1	1
OCT	347	65	69	87	31	18	270	1	1	16	7	0	0	0
NOV	314	150	63	37	16	3	269	10	5	3	3	2	1	1
DEC	369	119	52	42	13	20	246	6	3	0	0	0	0	0
TOTAL	4741	1817	502	929	277	154	3679	97	53	64	41	4	4	2

OSH APPEALS BOARD STATISTICS FOR 2005

MONTH	APPEALS DOCKETED	APPEALS DECIDED				DOSH CLOSED STIP/DISPOS DOCKETS	EMPLOYER WITHDREW CASES	BOARD DISMISSALS		TOTAL APPEAL DISPOSALS		
		ORDERS DOCKETS	CASES	DECISIONS DOCKETS	CASES			DOCKETS	CASES			
JAN	422	224	98	3	2	0	0	0	0	227		
FEB	435	161	82	29	7	87	0	0	4	281		
MAR	400	289	144	17	11	70	2	1	0	378		
APR	406	196	134	15	11	66	1	1	16	294		
MAY	187	367	164	46	10	34	92	35	0	539		
JUNE										0		
JULY										0		
AUG										0		
SEPT										0		
OCT										0		
NOV										0		
DEC										0		
TOTAL	1850	1237	622	110	41	257	78	95	37	20	8	1719
		72%				6%		15%		5%		1%

72%

6%

15%

6%

1%

Of the 1719 appeals disposed of in Calendar 2005, 72% were settled by ALJ Orders at prehearings or before hearings took place; 6% were decided at hearings; 15% were settled by Orders of the Board; 6% were withdrawn by Employers; and 1% were dismissed by the Board. Separately from this report, Employers withdrew intents to appeal for 100 appeals representing 42 cases that had not yet been docketed by the Board.

MONTH	RECONS FILED DOCKETED		RECONS FILED CASES		DARS ISSUED DOCKETED		DARS ISSUED CASES		DENIALS ISSUED DOCKETED		DENIALS ISSUED CASES		PETITS. FOR WRITS		PETITS. FOR WRITS CONCLUDED	
	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES
JAN	6	1	0	0	0	0	2	1	1	1	2	1	1	1	2	2
FEB	12	2	3	1	1	1	1	1	1	1	1	1	1	1	0	0
MAR	11	5	0	0	0	0	0	0	0	0	0	0	1	1	0	0
APR	13	4	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MAY	8	6	1	1	1	1	3	2	0	0	2	0	0	0	2	2
JUNE																
JULY																
AUG																
SEPT																
OCT																
NOV																
DEC																
TOTAL	50	18	4	4	4	4	6	4	4	4	3	3	4	4	4	4

OSH APPEALS BOARD STATISTICS FOR 1996

MONTH	APPEALS DOCKETED	APPEALS ORDERS	DECIDED DECISION	DOSH CLOSED STIPS/DISPO	EMPLOYEE WITHDRAWN	BOARD DISM.	TOTAL APPEAL DISPOSAL	RECON DOCKETED	RECON FILED	DARS ISSUED	DARS ISSUED	DENIALS ISSUED	DENIALS ISSUED	WRITS FILED	WRITS ISSUED
JAN	296	104	70	60	37	36	307	19	9	1	1	0	0	0	0
FEB	255	210	79	114	15	0	418	26	5	5	1	5	1	1	0
MAR	347	187	78	159	41	0	465	13	4	1	1	28	5	0	0
APR	374	133	65	120	14	59	391	6	4	1	1	0	0	0	1
MAY	360	282	64	37	11	15	409	21	8	3	1	3	2	0	0
JUNE	316	134	72	86	17	0	309	10	3	0	0	8	2	0	0
JUL	303	135	43	59	26	11	274	33	5	0	0	8	4	0	0
AUG	363	99	4	101	44	27	275	5	3	0	0	0	0	0	0
SEP	320	130	19	138	7	57	351	3	3	0	0	0	0	0	1
OCT	469	127	47	98	22	0	294	15	5	4	2	0	0	0	0
NOV	364	109	41	117	33	20	320	11	2	3	2	2	1	0	0
DEC	300	73	29	85	18	2	207	14	5	5	4	6	2	0	0
TOTAL	4067	1723	611	1174	285	227	4020	176	56	23	13	60	17	1	2

MONTH	APPEALS POCKETED	APPEALS ORDERS	APPEALS DECISIONS	DOSH CLOSED	EMPLOYMENT WITHDRAWN	BOARD DISM.	TOTAL APPEAL DISPOSAL	RECONSTRUCTION FILED	RECONSTRUCTION FILED	DARS ISSUED	DARS ISSUED	DENIALS ISSUED	DENIALS ISSUED	WRITS FILED	WRITS ISSUED
JAN	363	125	53	92	20	0	290	7	5	0	0	0	0	0	0
FEB	315	186	16	15	42	37	296	3	3	2	2	5	3	0	0
MAR	282	192	52	136	8	5	393	2	2	5	4	0	0	0	0
APR	286	320	89	67	17	47	540	3	3	4	2	2	2	0	0
MAY	330	299	38	26	8	6	377	11	3	0	0	1	1	0	0
JUNE	228	285	16	41	19	21	382	11	4	8	5	2	2	0	1
JUL	338	379	33	54	6	0	472	5	2	1	1	12	3	0	0
AUG	335	326	43	34	27	47	477	16	5	3	3	1	1	1	0
SEP	327	317	70	62	0	39	488	6	6	10	5	10	2	0	0
OCT	296	152	71	37	40	0	300	34	8	25	2	1	1	2	0
NOV	290	184	30	21	0	0	233	6	6	1	1	5	3	0	0
DEC	233	157	26	74	26	0	283	10	3	6	2	13	2	0	0
TOTAL	3623	2922	537	659	213	202	4531	114	50	65	27	52	20	3	1

OSH APPEALS BOARD STATISTICS FOR 1998

OSH APPEALS BOARD STATISTICS FOR 1999

MONTH	APPEALS DOCKETED	APPEALS DECIDED ORDERS	DECISIONS	DOSH CLOSED STIPS/DISPO	EMPLOYER WITHDREW	BOARD DISM.	TOTAL APPEAL DISPOSALS	RECONS FILED DOCKETS	RECONS FILED CASES	DARS ISSUED DOCKETS	DARS ISSUED CASES	DENIALS ISSUED DOCKETS	DENIALS ISSUED CASES	PETITS. FOR WRITS	PETITS. FOR WRITS CONCLUDED
JAN	236	187	47	186	43	108	571	17	5	1	1	4	1	0	1
FEB	274	170	72	69	11	0	322	63	17	4	1	7	2	0	0
MAR	361	350	34	90	1	27	502	18	12	4	3	15	3	2	1
APR	246	261	37	96	0	12	406	42	8	6	2	3	2	0	0
MAY	282	188	56	113	53	9	419	12	5	9	7	1	1	0	1
JUNE	283	293	35	30	17	0	375	3	1	3	3	3	2	0	0
JULY	269	213	64	57	0	0	334	18	7	18	6	7	2	0	0
AUG	406	268	72	55	37	15	447	8	1	26	5	0	0	2	1
SEPT	133	191	21	25	0	0	237	4	3	54	12	1	1	0	0
OCT	369	260	46	80	41	0	427	3	2	11	7	0	0	0	0
NOV	261	160	4	92	0	26	282	12	3	12	3	0	0	2	1
DEC	370	167	29	60	60	17	333	2	2	6	5	0	0	0	0
TOTAL	3490	2708	517	953	263	214	4655	202	66	154	55	41	14	6	5

58%

11%

20%

6%

5%

OSH APPEALS BOARD STATISTICS FOR 2000

MONTH	APPEALS DOCKETED	APPEALS DECIDED ORDERS	DECISIONS	DOSH CLOSED STIPS/DISPO	EMPLOYER WITHDREW	BOARD DISM.	TOTAL APPEAL DISPOSALS	RECONS FILED DOCKETS	RECONS FILED CASES	DARS ISSUED DOCKETS	DARS ISSUED CASES	DENIALS ISSUED DOCKETS	DENIALS ISSUED CASES	PETITS FOR WRITS	PETITS. FOR WRITS CONCLUDED
JAN	247	118	38	44	0	0	200	7	6	0	0	8	1	1	1
FEB	353	177	32	47	27	3	286	3	3	1	1	0	0	0	0
MAR	405	295	27	49	0	18	389	7	5	4	1	0	0	0	0
APR	330	244	23	15	24	0	306	0	0	3	3	2	2	0	0
MAY	402	267	21	75	20	10	393	3	2	2	2	0	0	1	1
JUNE	462	220	40	81	4	2	347	11	5	15	9	0	0	0	0
JULY	320	147	44	35	29	0	255	9	6	4	2	6	2	1	0
AUG	393	87	37	50	7	15	196	11	7	0	0	4	2	0	0
SEPT	405	214	24	45	41	23	347	10	3	1	1	3	1	0	0
OCT	401	161	54	15	0	0	230	18	11	5	5	0	0	0	0
NOV	314	200	31	56	14	8	309	9	7	4	4	9	3	0	0
DEC	523	152	28	53	24	15	272	3	2	7	6	0	0	0	0
TOTAL	4555	2282	399	565	190	94	3530	91	57	46	34	32	11	3	2

MONTH	APPEALS DOCKETED	APPEALS DECIDED ORDERS	DOSH CLOSED STIPS/DISPO	EMPLOYER WITHDREW	BOARD DISM.	TOTAL APPEAL DISPOSALS	RECONS FILED DOCKETS	RECONS FILED CASES	DARS ISSUED DOCKETS	DARS ISSUED CASES	DENIALS ISSUED DOCKETS	DENIALS ISSUED CASES	PETTIS FOR WRITS	PETTIS. FOR WRITS CONCLUDE	
JAN	387	216	22	53	21	7	319	8	5	0	0	5	4	1	0
FEB	302	331	41	22	23	3	420	3	1	21	5	3	1	1	0
MAR	421	243	42	63	0	11	359	12	2	5	5	0	1	0	0
APR	372	364	36	22	75	0	497	3	3	13	8	0	0	1	1
MAY	612	252	66	31	28	30	407	21	5	3	3	0	0	0	0
JUNE	421	133	33	24	0	5	195	33	6	11	9	0	0	0	0
JULY	410	206	54	58	29	7	354	4	3	8	6	4	2	0	1
AUG	544	248	36	50	0	45	379	27	4	17	10	3	2	0	1
SEPT	350	214	28	27	0	2	271	6	3	15	8	1	1	1	0
OCT	482	229	62	0	45	0	336	23	10	19	5	0	0	0	0
NOV	507	253	19	56	0	5	333	10	2	7	6	10	5	1	0
DEC	447	272	25	22	66	10	395	9	4	7	6	1	1	7	0
TOTAL	5255	2961	464	428	287	125	4265	159	48	126	71	27	16	13	3
69%11%10%7%3%															

OSH APPEALS BOARD STATISTICS FOR 2002

MONTH	APPEALS DOCKETED	APPEALS DECIDED				DOSH CLOSED		EMPLOYER WITHDREW		BOARD DISMISSALS		TOTAL APPEAL DISPOSALS
		ORDERS DOCKETED	CASES	DECISIONS DOCKETED	CASES	STIP/DISPOS DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	
JAN	586	353	150	12	9	21	12	0	0	3	2	389
FEB	420	240	111	7	5	0	0	37	20	0	0	284
MAR	320	282	131	41	18	22	8	0	0	0	0	345
APR	559	237	108	52	29	117	56	18	11	50	30	474
MAY	589	262	106	75	16	23	12	86	35	19	13	465
JUNE	384	316	125	20	11	23	11	0	0	0	0	359
JULY	511	183	87	76	19	110	43	0	0	49	17	418
AUG	426	250	104	29	13	77	35	0	0	65	27	421
SEPT	374	189	89	86	18	3	3	0	0	34	12	312
OCT	438	218	106	10	5	31	15	32	32	12	4	303
NOV	371	225	91	32	5	15	2	35	35	1	1	308
DEC	389	178	83	31	20	49	20	0	0	0	0	258
TOTAL	5367	2933	1291	471	168	491	217	208	133	233	106	4336

68%

12%

11%

5%

5%

Of the 4336 appeals disposed of in Calendar 2002, 68% were settled by ALJ Orders at prehearings or before hearings took place, 12% were decided at hearings, 11% were settled by Orders of the Board, 5% were withdrawn by Employers, and 5% were dismissed by the Board.

MONTH	RECONS FILED DOCKETED		RECONS FILED CASES		DARS ISSUED DOCKETED		DARS ISSUED CASES		DENIALS ISSUED DOCKETED		DENIALS ISSUED CASES		PETITS. FOR WRITS	PETITS. FOR WRITS CONCLUDED
	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES		
JAN	13	6	2	2	0	0	0	0	0	0	0	0	0	0
FEB	8	4	0	0	0	0	0	0	0	0	0	0	0	0
MAR	1	1	9	8	12	4	0	0	0	0	0	0	0	0
APR	15	9	10	8	2	1	1	1	1	2	2	2	2	2
MAY	22	14	6	2	3	1	2	1	2	2	2	2	2	2
JUNE	2	2	4	4	8	3	3	3	1	1	1	1	1	1
JULY	11	9	3	3	6	3	0	0	0	0	0	0	0	0
AUG	15	7	6	5	0	0	0	0	0	0	0	0	0	0
SEPT	16	8	29	3	11	4	2	2	2	2	2	2	2	2
OCT	25	8	7	5	6	2	2	2	2	2	2	2	2	2
NOV	10	5	3	3	6	2	2	2	2	2	2	2	2	2
DEC	2	1	6	4	5	2	2	2	2	2	2	2	2	2
TOTAL	140	74	85	47	59	22	13	3	3	3	3	3	3	3

OSH APPEALS BOARD STATISTICS FOR 2003

MONTH	APPEALS DOCKETED	APPEALS DECIDED				DOSH CLOSED STIP/DISPOS DOCKETS	EMPLOYER WITHDREW CASES	BOARD		TOTAL APPEAL DISPOSALS		
		ORDERS DOCKETS	CASES	DECISIONS DOCKETS	CASES			DOCKETS	CASES			
JAN	482	186	78	26	8	62	23	108	59	4	3	386
FEB	405	187	72	39	11	0	0	0	0	23	15	249
MAR	470	213	91	36	9	27	16	20	10	12	4	308
APR	526	158	70	11	7	30	12	5	5	15	6	219
MAY	359	156	78	16	3	0	0	81	38	0	0	253
JUNE	446	177	90	26	9	77	27	55	20	47	16	382
JULY	367	197	82	15	8	30	10	14	6	12	5	268
AUG	345	219	87	12	5	19	8	40	10	7	3	297
SEPT	448	280	120	18	10	49	11	64	47	22	10	433
OCT	435	125	57	3	2	16	7	27	7	16	10	187
NOV	331	87	39	18	5	24	11	88	35	0	0	217
DEC	621	160	73	15	5	22	9	38	9	0	0	235
TOTAL	5235	2145	937	235	82	356	134	540	246	158	72	3434

62%

7%

10%

16%

5%

Of the 3,434 appeals disposed of in Calendar 2003, 62% were settled by ALJ Orders at prehearings or before hearings took place; 7% were decided at hearings; 10% were settled by Orders of the Board; 16% were withdrawn by Employers; and 5% were dismissed by the Board. Separate from this report Employer withdrew intents to appeal for 82 appeals representing 38 cases that had not been docketed by the Board.

MONTH	RECONS FILED DOCKETS	RECONS FILED CASES	DARS ISSUED DOCKETS	DARS ISSUED CASES	DENIALS ISSUED DOCKETS	DENIALS ISSUED CASES	PETITS. FOR WRITS	PETITS. FOR WRITS CONCLUDED
JAN	6	4	12	6	2	1	0	1
FEB	4	3	4	3	0	0	1	0
MAR	12	6	2	2	2	1	1	1
APR	19	6	19	5	2	2	4	0
MAY	4	3	3	3	3	1	2	0
JUNE	4	2	1	1	2	2	0	0
JULY	15	4	2	2	1	1	1	0
AUG	9	8	4	2	5	3	0	0
SEPT	0	0	2	2	0	0	1	1
OCT	7	4	3	3	4	3	1	0
NOV	2	1	27	7	2	1	2	1
DEC	11	2	2	2	2	2	0	0
TOTAL	93	43	81	38	25	17	13	4

OSH APPEALS BOARD STATISTICS FOR 2004

MONTH	APPEALS DOCKETED	APPEALS DECIDED				DOSH CLOSED STIP/DISPOS		EMPLOYER WITHDREW		BOARD DISMISSALS		TOTAL APPEAL DISPOSALS
		ORDERS DOCKETED	CASES	DECISIONS DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	
JAN	357	110	59	2	1	36	8	10	5	0	0	158
FEB	421	120	53	2	2	40	21	160	78	0	0	322
MAR	513	219	80	13	6	0	0	39	14	17	9	288
APR	416	143	65	14	5	73	22	45	18	19	6	294
MAY	325	225	94	3	3	12	4	67	30	10	5	317
JUNE	486	194	98	3	3	22	8	0	0	8	2	227
JULY	323	279	123	7	6	11	6	63	29	0	0	360
AUG	386	183	84	12	8	52	21	28	12	26	16	301
SEPT	269	218	105	6	3	0	0	79	29	0	0	303
OCT	425	203	98	12	4	0	0	34	13	0	0	249
NOV	332	230	94	6	2	85	36	32	8	24	13	377
DEC	509	341	132	25	6	29	11	40	24	25	4	460
TOTAL	4762	2465	1085	105	49	360	137	597	260	129	55	3656

67%

3%

10%

16%

4%

Of the 3,654 appeals disposed of in Calendar 2004, 67% were settled by ALJ Orders at prehearings or before hearings took place; 3% were decided at hearings; 10% were settled by Orders of the Board; 16% were withdrawn by Employers; and 4% were dismissed by the Board. Separately from this report, Employers withdrew intents to appeal for 74 appeals representing 31 cases that had not yet been docketed by the Board.

MONTH	RECONS FILED DOCKETED	RECONS FILED CASES	DARS ISSUED DOCKETED	DARS ISSUED CASES	DENIALS ISSUED DOCKETED	DENIALS ISSUED CASES	PETITS. FOR WRITS	PETITS. FOR WRITS CONCLUDED
JAN	8	2	8	3	0	0	0	3
FEB	2	1	12	3	11	2	1	0
MAR	8	5	8	3	1	1	1	1
APR	15	7	3	2	3	2	2	0
MAY	3	1	0	0	4	2	1	1
JUNE	4	2	1	1	0	0	0	0
JULY	0	0	2	1	0	0	1	0
AUG	1	1	4	4	0	0	1	0
SEPT	4	2	0	0	0	0	1	1
OCT	6	2	3	1	0	0	0	0
NOV	6	3	1	1	3	1	1	1
DEC	9	4	2	2	2	1	0	3
TOTAL	66	30	44	21	24	9	9	10

OSH APPEALS BOARD STATISTICS FOR 2005

MONTH	APPEALS DOCKETED	APPEALS DECIDED				DOSH CLOSED STIP/DISPOS		EMPLOYER WITHDREW		BOARD DISMISSALS		TOTAL APPEAL DISPOSALS
		ORDERS DOCKETED	CASES	DECISIONS DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	DOCKETED	CASES	
JAN	422	224	98	3	2	0	0	0	0	0	0	227
FEB	435	161	82	29	7	87	23	0	0	4	1	281
MAR	400	289	144	17	11	70	19	2	1	0	0	378
APR	406	196	134	15	11	66	21	1	1	16	7	294
MAY	187	367	164	46	10	34	15	92	35	0	0	539
JUNE												0
JULY												0
AUG												0
SEPT												0
OCT												0
NOV												0
DEC												0
TOTAL	1850	1237	622	110	41	257	78	95	37	20	8	1719

72%

6%

15%

6%

1%

Of the 1719 appeals disposed of in Calendar 2005, 72% were settled by ALJ Orders at prehearings or before hearings took place; 6% were decided at hearings; 15% were settled by Orders of the Board; 6% were withdrawn by Employers; and 1% were dismissed by the Board. Separately from this report, Employers withdrew intents to appeal for 100 appeals representing 42 cases that had not yet been docketed by the Board.

MONTH	RECONS FILED DOCKETED		RECONS FILED CASES		DARS ISSUED DOCKETED		DARS ISSUED CASES		DENIALS ISSUED DOCKETED		DENIALS ISSUED CASES		PETITS. FOR WRITS		PETITS. FOR WRITS CONCLUDED	
JAN	6		1		0		0		2		1		1		2	
FEB	12		2		3		1		1		1		1		0	
MAR	11		5		0		0		0		0		1		0	
APR	13		4		0		0		0		0		0		0	
MAY	8		6		1		1		3		2		0		2	
JUNE																
JULY																
AUG																
SEPT																
OCT																
NOV																
DEC																
TOTAL	50		18		4		2		6		4		3		4	

OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD ANSWERS FOR SENATE RULES - QUESTION #4

QUESTION #4, PART 2: NUMBER OF PETITIONS FOR RECONSIDERATION FILED BY A PARTY TO THE ACTION

YEAR	PETITIONS FOR RECONSIDERATION				DOSH FILED				3RD PTY & EE
	EMPLOYER FILED GRANTED	% GRANTED	DENIED	% DENIED	GRANTED	% GRANTED	DENIED	% DENIED	
1995	26	65%	14	35%	7	78%	2	22%	3
1996	24	57%	18	43%	9	100%	0	0%	0
1997	22	51%	21	49%	3	75%	1	25%	0
1998	31	65%	17	35%	6	100%	0	0%	0
1999	30	70%	13	30%	10	100%	0	0%	0
2000	32	71%	13	29%	14	93%	1	7%	2
2001	25	68%	12	32%	4	100%	0	0%	2
2002	40	65%	22	35%	5	63%	3	38%	1
2003	21	57%	16	43%	5	100%	0	0%	0
2004	12	55%	10	45%	3	100%	0	0%	0
2005	3	60%	2	40%	1	100%	0	0%	0
AVERAGE	24	62%	14	38%	6	92%	1	8%	1

(SEE ATTACHMENT 1 TAB 2 FOR BACKUP DATA PROVIDED BY OSH APPEALS BOARD LEGAL STAFF)



Close

From: Douglas Nareau**To:** Candice Traeger**Cc:** Robert Villalovos**Subject:** Grants and Denials 1995-2005**Sent:** 6/17/05 11:43 AM**Importance:** Normal

I've come up with the following statistics regarding Board grants and denials of petitions from 1995 through May, 2005.

Year	Petitions		Filed by DOSH		Board or 3rd Party	
	Granted	Denied	Granted	Denied	Granted	Denied
1995	26	14	7	2	3	2
1996	24	18	9	0	6	0
1997	22	21	3	1	14	0
1998	31	17	6	0	3	0
1999	30	13	10	0	15	0
2000	32	13	14	1	2	0
2001	25	12	4	0	6	0
2002	40	22	5	3	1	0
2003	21	16	5	0	1	0
2004	12	10	3	0	3	0
2005	3	2	1	0	7	0

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**OCCUPATIONAL SAFETY & HEALTH APPEALS BOARD
ANSWERS FOR SENATE RULES - QUESTION #4**

QUESTION #4, PART 3: THE NUMBER OF ALJ DECISIONS THE BOARD HAS INDEPENDENTLY CHOSEN TO RECONSIDER

BOARD'S OWN MOTION

YEAR	# OF CASES
1995	1
1996	7
1997	14
1998	2
1999	16
2000	0
2001	4
2002	0
2003	1
2004	2
2005	7

* FIVE OF THESE ARE FIELD SANITATION CASES WHERE PENALTY WAS AT ISSUE

* FIVE OF THESE ARE CASES THAT WERE REMANDED FOR CONFORMITY BASED UPON THE COURTS REVERSAL OF THE 1997 FIELD SANITATION CASES OSH APPEALS BOARD ISSUED.

* FOUR OF THESE CASES ARE ABOUT FINANCIAL HARDSHIP; THERE ARE THREE OTHER FINANCIAL HARDSHIP CASES AWAITING RECONSIDERATION

(SEE BACKUP DETAIL FOR THE SEVEN CASES TAKEN UP THIS YEAR- ATTACHMENT 1, TAB 3)

Often times, as is the case in 1997, 1999, and 2005, several cases are taken up on the Board's Own Motion because they have similar issues, facts, or citations that have either been ruled on inconsistently, case precedent was not followed, or the Board wants to review and reconsider existing precedent. Although this creates an anomaly in the numbers, it explains numbers that can otherwise be misconstrued.

Summaries of Board Ordered Reconsideration Cases 1995-2005

1. Baker Construction Company, Inc. 94-2712 April 2, 1997

A son of the principal owners usually worked for Employer. He was leased with a backhoe to another contractor, under an informal, per hour contract. Without discussing the primary/secondary employer issue, the ALJ held Employer responsible for the safety order violations to which the son was exposed. The Board ordered reconsideration. Employer did not respond. The Board concluded that the ALJ's decision was supported by the evidence presented.

2. Delta Excavating, Inc. 94-2389 August 10, 1999

Under section 1541.1(c), the Division must determine which option Employer is utilizing and prove it did not comply with that option "or any of the other options." Options (2) through (4) are not stated as options so the burden is not on Employer to prove it complied with one of them. If the Division proves Employer didn't comply with option (1); the Division still has to prove no compliance with the other options to establish a section 1541.1(c) violation. The Division failed to prove non-compliance with options (2) through (4). The appeal was granted.

3. Conard House 95-931 July 27, 1999

Employer is a non-profit corporation that maintains a storefront facility that serves clients with mental disabilities by disbursing funds to them. Employer does not provide healthcare to its clients. On one occasion an employee of Employer performing janitorial duties found a hypodermic needle (sharp) in the trash can in the bathroom. In addition, the ALJ reduced the civil penalties based on financial hardship. The issues before the Board were: (1) was there sufficient evidence of financial hardship to support the ALJ's reduction of the civil penalties; and (2) did the evidence establish that Employer's employees were occupationally exposed to bloodborne pathogens requiring Employer to provide an exposure control plan pursuant to section 5193(c)(1)(A). The Board determined that there was insufficient evidence of financial hardship to support the further reduction of the civil penalties since the only evidence presented was that any payment of penalties would reduce the monies available to Employer's clients. The penalties had already been reduced in accordance with the maximum penalty reductions allowed under the Director's regulations. The Board further found that occupational exposure to bloodborne pathogens was not established by the one single instance of a sharp in a restroom or by the potential, hypothetical exposure by employees to the pathogens because of the clientele that Employer serves. Since employees' duties do not require or risk contact with blood, the mere presence of blood is not enough to establish occupational exposure.

4. Triad Geotechnical Consultants 94-2231 November 10, 1999

The Board followed its consistent interpretation of section 1512(b) first announced in decisions after reconsideration more than 20 years ago that on a construction site, even when a single employee is performing technical or professional service, there must be a first-aid qualified employee. The first-aid qualified employee may be that single employee, a second employee is not required. The Division did establish a serious violation of section 1541(j)(1) because the employee was in an unprotected excavation nine feet deep, the top two feet of which were loose sedimentary soil. The Board found that the Division failed to prove that the failure to provide a safe means of egress from the trench in violation of section 1541(c)(2) was properly classified as serious, because it did not in itself add to the risk of serious injury already caused by the violation of section 1541(j)(1) described above.

5. Rick's Electric, Inc. 95-136 September 24, 1997

In November, 1994 an employee worked on a light fixture thought to be de-energized. There was no lock/tag out. Someone energized the light fixture and the employee was badly burned. On December 1, 1994, another employee was assigned to work on three 227 volt cables. The foreman thought they were de-energized but didn't check. The Division alleged a willful/serious violation of section 2320.2(a), which provides work shall not be performed on exposed energized parts until, (1) a responsible supervisor has determined that the work is to be done while the system is hot, (2) employees have received instructions on work techniques and hazards regarding energized equipment and, (3) protective equipment is provided & used. The Board affirms a section 2320.2(a) violation because the foreman's guess that the system was not energized was not a "positive determination" that the system was not energized and section 2320.3 mandates that all systems are to be treated as energized until tested or proven to be de-energized. Allowing an untrained apprentice without protective equipment to work on the untested system after the earlier accident, was a "disregard of section 2320.2(a)(1),(2) and (3), and, therefore, a disregard for worker safety laws." "Both injured employees testified that, although not qualified to do so, they had worked on energized circuits under the supervision of their foremen. After the first accident, Employer was clearly on notice of its improper working practices and still did nothing to ensure employee safety." This demonstrated a callous indifference to employee safety. The Board reinstated the willful classification and the \$40,000 penalty dismissed by the ALJ.

6. W. F. Scott & Co., Inc. 95-2623 October 29, 1999

Employer did not provide employees with eyewash (5162(a)) and shower (5162(b)) facilities that met ANSI standards. The ALJ sustained both violations but set the civil penalty for the shower violation aside as

duplicative. The Board upholds the ALJ decision. Both section (a) and (b) provide emergency-drenching relief for employees splashed with hazardous chemicals, Employer had a 39-year history of no reportable injuries or illnesses, and a sincere interest in employee safety. (*Anresco, Inc.* 90-855 is compared & *Strong Tie Structures* 75-856 is discussed.) The ALJ's reduction of the classification of the section 5194(e)(1) HazCom violation from serious to general was also upheld. There were a variety of chemicals at the site. A wide range of injuries and illnesses were possible depending on the type, quantity, etc., of chemicals involved in an accident. The Division focused the "substantial probability of Serious Physical Harm" proof on the accidental mixing of cyanide with an acid to form a dangerous hydrogen cyanide gas (*Tenneco West* 79-535), but failed to show that work exposed employees to that possibility, or that employees were not instructed to avoid mixing the chemicals (employee hearsay statement).

7. Oasis Springs Corp. DAR on Petition For Costs P95-009 2/18/98

The Board finds "overwhelming evidence" that a realtor, whose agent hired a couple who operate a cleaning service, to clean a house containing asbestos dust, is not the employer of the agent or the cleaners. The "overwhelming evidence" shows that both are independent contractors. All of this evidence was available to the Division who issued the citations. The evidence gathered by the inspector was reviewed by Division management and their legal unit before the citations were issued. However, the Board concludes that the Division "ignored" or acted in spite of "overwhelming evidence" when it issued the citations, and awards Employer's appeal and reconsideration costs.

8. Paige Cleaners 96-1144 October 15, 1997

The Board upholds the ALJ's reduction of \$3,350 in civil penalties to \$1,020 where Employer was "marginally profitable" and had abated the violations. This case has much dicta on when and how to reduce penalties.

9. Aqua Seal 96-4015,

10. DWS Distribution Centers, Inc., 97-143, And

11. United Riggers & Erectors, Inc., 97-146, April 8, 1998

These are all DARs decided by the Board on April 8, 1998, which hold that the Division does not have the jurisdiction to enforce the Labor Code section 6431 workers' comp notice requirement; The Division's jurisdiction is limited to enforcement of safety and health regulations of the Standards Board.

12. Associated Ready Mix 95-3794 December 6, 2000

The Board ordered reconsideration regarding the serious classification of a section 4002(a) violation and the amount of the penalty. The Board

finds sufficient evidence of a serious injury by inference from the compliance officer's testimony that employee's arm was "mangled" and Employer witness testimony that employee had several surgeries and residual disability. The Division improperly allowed Good Faith and History penalty reductions that cut the \$5,000 penalty for a serious injury related violation to \$2,250. The ALJ withdrew the improper deductions and allowed a proper Size deduction, raising the penalty to \$3,500. Then the ALJ reduced it by 50% to \$1,750 because Employer had an "excellent safety program" and the accident was an "isolated incident." The Board finds that Employer knew that the employees frequently used rags to wipe down energized cement mixer drums, invalidating the ALJ's basis for a reduction. Exercising its Labor Code section 6602 power to determine the appropriate penalties, the Board reinstates the \$2,250 penalty proposed by the Division.

13. Emerald Produce Co. 96-2679 May 4, 1999

The Division established a general violation of section 3457(c)(1)(C) [absence of single-use drinking cups]. Consistent with the superior court's ruling on a petition for writ of mandamus brought by the California Rural Legal Assistance Foundation, the \$750 mandatory minimum civil penalty required by Labor Code section 6712 for failure to provide a facility required by section 3457, the field sanitation standard, applies to this violation.

14. Rangel's Labor Contracting 96-2288 May 4, 1999

The Division established general violations of sections 3457(c)(1)(C) [absence of single-use drinking cups] and 3457(c)(2)(A) [toilet facilities with required hand washing facilities]. Consistent with the superior court's ruling on a petition for writ of mandamus brought by the California Rural Legal Assistance Foundation, the \$750 mandatory minimum civil penalty required by Labor Code section 6712 for failure to provide a facility required by section 3457, the field sanitation standard, applies to each of these violations.

15. Smith Brothers Farms - A Partnership 96-1188 May 4, 1999

The Division established a general violation of section 3457(c)(1)(C) [absence of single-use drinking cups]. Consistent with the superior court's ruling on a petition for writ of mandamus brought by the California Rural Legal Assistance Foundation, the \$750 mandatory minimum civil penalty required by Labor Code section 6712 for failure to provide a facility required by section 3457, the field sanitation standard, applies to this violation.

16. Philip Giba Farms 96-2543 May 4, 1999

The Division established a general violation of section 3457(c)(1)(C) [absence of single-use drinking cups]. Consistent with the superior

court's ruling on a petition for writ of mandamus brought by the California Rural Legal Assistance Foundation, the \$750 mandatory minimum civil penalty required by Labor Code section 6712 for failure to provide a facility required by section 3457, the field sanitation standard, applies to this violation.

17. Manuel M. Rodriguez, 96-2789 May 4, 1999

The Division established a general violation of section 3457(c)(3)(C) [absence of toilet paper]. Consistent with the superior court's ruling on a petition for writ of mandamus brought by the California Rural Legal Assistance Foundation, the \$750 mandatory minimum civil penalty required by Labor Code section 6712 for failure to provide a facility required by section 3457, the field sanitation standard, applies to this violation.

18. Linsey Fashions 96-2695 April 18, 2001

Mr. Bui was doing business as Linsey Fashion, manufacturing garments at the site on 5/7/96 when the Division inspected and found violations. At the hearing, Mr. Bui testified the he sold the business to Mr. Vu on 7/9/96. He produced a "bill of sale" and the Labor Commissioner's certificate issued to Mr. Vu on 8/13/96 as "Mr. Vu dba Lucky Sewing" and also an IRS change of address. Before the hearing, Mr. Vu sold the business to Ms. Huynh who was doing the same type of business at the site under the name "Linsey II Fashions" at the time of the hearing. Ms. Huynh employed Mr. Bui to manage the business. The Board holds that Mr. Bui failed to prove he was "no longer involved in control of the continuing business." *Lefty's Pizza* and *Arcade Meats* cases do not apply. The penalties were reinstated.

19. Metalclad Insulation Corp. 96-130 October 4, 2000

Rules and administrative controls designed to protect employees against reaching through an unguarded opening to in-running rollers cannot be substituted for the positive guarding required by section 4187(a). [*Bethlehem Steel* 78-723, (8/17/84)] An untrained employee violated the rule that untrained employees could not operate the roll machine. Employee misconduct in violating a rule designed to substitute for an unprovided guard is not a defense to failure to guard, whether called misconduct or malfeasance.

20. Paso Robles Public Schools 96-1722 October 4, 2000

An elevated playhouse was under a roof access ladder in a classroom. Employees went onto the playhouse stairs and 5 foot high platform to reach the ladder. Sometimes teachers did too, to help children. The playhouse did not have high enough stair rails and guardrails, mid-rails or headroom clearance meeting OSHA requirements. The Division's abatement requiring Employer to meet OSHA requirements was

reasonable, though it might impact on the usability of the playhouse by children. Just moving the playhouse away from the access ladder would not prevent occasional teacher exposure. The Appeals Board can't grant variances.

21. Color Specialists, Inc. 95-3883 June 30, 2000

The ALJ set aside penalties for section 3384(a) [hand protection] and section 5162(b)[emergency shower] violations because the violations pertained to the same hazard of being splashed with a corrosive chemical solution used to develop photos as the section 3383(a) [body protection] violation Employer also committed. The Board agreed that the three violations pertained to the same splashing hazard. However, under *S.F. Newspaper Agency* OSHAB 93-319 Dec. 20, 1996, upon which the ALJ relied, the two penalties could only be set aside if all three could be abated by the same action. In *S.F.* the employer did that by ceasing to use the hazardous product. In this case Employer continued to use the developer and no other single form of abatement action could meet the body, hand and shower protection requirements of the cited safety orders. Thus, the *S.F.* rationale did not apply and was not authority for setting aside the two penalties.

22. Jaco Oil Company 97-943 November 22, 2000

The fire department's report of an employee's injury to the Division under section 342(b) did not relieve the employer of its independent duty to report the injury under section 342(a). Employer didn't report the injury to the Division and the Board upheld a regulatory violation of section 342(a).

23. Closets Unlimited 97-2887 March 27, 2001

Employer failed to plead in its appeal that a stairway landing was not subject to section 3231(f)[landing must be as deep as it is wide] because the stairway and the building were 30 yrs old and, thus, exempt under the section 3202(b)(1) grandfather clause. The Board held that it is an exception for which Employer had the burden of proof. Under *Owl Rock Products Co.*, 83-0082 there are 2 elements of proof: (1) The installation antedated the cited safety order; and, (2) The installation was in compliance with the safety orders or variations in effect when it was built. If Employer shows it cannot find the earlier safety orders with reasonable diligence, there is a rebuttable presumption of compliance. Since section 3202(b)(1) is an affirmative defense, Employer has to plead it to assert it. That was not done. The landing was 4' wide and only 2½' deep. A general violation of section 3231(f) was upheld.

24. Shea-Kiewit-Kenny 95-3234 September 15, 1999 Vacated

Fed/OSHA's exercise of jurisdiction over a construction place of employment to enforce a federal safety order was not contained in the Cal/OSHA regulations and did not pre-empt the Division's jurisdiction at the site to enforce California's Safety Orders pertaining to other subjects. SKK, a joint venture, disbanded and ceased being an employer in California so the civil penalties were set aside.

25. Shea-Kiewit-Kenny 95-1186 September 15, 1999 Vacated

Fed/OSHA's exercise of jurisdiction over a construction place of employment to enforce a federal safety order was not contained in the Cal/OSHA regulations and did not pre-empt the Division's jurisdiction at the site to enforce California's Safety Orders pertaining to other subjects. SKK, a joint venture, disbanded and ceased being an employer in California so the civil penalties were set aside.

26. CSU Dominguez Hills 98-1799 October 29, 1999

Dept. of Corrections companion case. Employer provided the union representative with a copy of the Log 200 with employee names redacted. No section 14308(b) violation was found.

27. Hong Phat Farm 98-1449 April 30, 2001

Employer was cited under section 3457(c)(2)(D) because its toilet facility was more than 1/4 mile or 5 minutes from the agricultural field workers during part of the workday. The ALJ set aside the civil penalty. The Board reinstates the civil penalty, citing Emerald Produce 96-2679, 5/4/99 holding that there is no distinction between failing to maintain and failing to provide a field sanitation facility. Hence, the \$750 minimum penalty required by the Labor Code must be assessed, regardless of the duration of the violative condition.

28. Michael Paul Company, Inc. 97-3320 May 30, 2001

An employer may comply with the section 341.1(f)(3) duty to notify the nearest Division office before commencing an excavation, by FAX but "independent verifiable proof" of that fact is needed to prove compliance if the Division states that it did not receive the FAX. A violation of section 341.1(f)(3) was sustained.

29. County of LA, Metropolitan Transit Authority 98-539 12/21/99

This is the lead case of 3 cases in which different employers were cited under section 1626(e) for exposure of their employees to the same stairway hazard at MTA stations under construction. The stairway abutted a partially installed escalator on one side and a concrete slab inset with light wells on the other, the escalator and the lighting slab were on the same inclined plane as the stairway. Hence, from any point on the stairway, there was no drop in elevation from the side of the stairway to

the adjoining side of either the escalator or lighting slab. Section 1629(e) requires stair railings on "open sides" of stairs. The Board finds that "stair railings," which require mid-rails, are designed to protect employees against the hazard of falling off a drop at the side of a stairway, and that, in this context, "open sides" are stairway sides where there is a drop of "appreciable distance," to be determined on a case-by-case basis. Here there was no such drop on either side of the stairway and, therefore, no "open sides" subject to the section 1626(e) "stair railing" requirement. The companion cases, decided on the same facts and rationale are **Kiewit-Shea 98-604** and **Shasta Electric 98-538**. There was an additional issue in the **County Of L.A., MTA** case. With notice to the parties, the ALJ amended the citation after the case had been submitted to allege a violation of section 1629(a)(2) which requires stairways to be equipped with "handrails." "Handrails" have a different purpose than "stair railings"; they provide employees with hand-hold protection against falls onto or down the stairway itself. A "handrail" may consist of a single rail (no mid-rail) 30" to 34" above the plane of the stair treads; a convenient hand-hold height. In contrast, to provide side-fall [open side] protection, the top rail of "stair railings" must be 42" to 45" above the tread plane to deter falls over the top of the barrier and include a mid-rail to prevent falls under the top rail. The ALJ found a violation of section 1629(a)(2). Employer claimed it was prejudiced by the amendment. The Board concurred because sections 1626(e) and 1629(a)(2) address different hazards, and the Division, who has the discretion to determine which safety order to cite chose not to amend and attempted to prove only a violation of section 1626(e).

30. Kiewit-Shea 98-604 December 21, 1999

A companion case to County of LA Metropolitan Transit Authority, 98-539, 12/21/99.

31. Miller Thompson 99-3121 September 26, 2001

The Board holds that the termination of a joint venture consisting of several construction industry employers before the appeal hearing at which alleged violations were established against the joint venture does not justify setting aside the penalties the Division proposed against the joint venture for the violations.

32. Pacific MDF Products 00-3172 February 19, 2004

Employer made improvements to its business and abated existing violations. Employer conceded that the penalty assessment alone would not cause it to cease business. No basis for financial hardship relief was established. The Board found that elimination of all penalties, in this case, without due regard for the protective objectives of the Act and the deterrent purposes of the penalty citation system would undermine the credibility of the Cal/OSHA program. The Board reiterated that

abatement credits beyond that contemplated in the Director's regulations would not be given for merely abating existing violations.

33. Eagle Environmental, Inc. 98-1640 October 19, 2001

Employer appealed an \$11,300 penalty on the grounds that it had gone out of business and was suffering financial hardship. The ALJ set aside the penalty under *Lefty's/Arcade Meats* cases because Employer was out of business and did not intend to engage in the "same business" again. The Board overruled *Lefty's/Arcade Meats*. Out of business alone is not a ground for penalty relief; although it may be some evidence of financial hardship. The Board reviewed the financial hardship evidence and found that Employer did not prove financial hardship under the *Dye & Wash* and *Bumper Shop* criteria.

34. Now & Zen 00-3492 January 23, 2004

Employer received several citations alleging serious, general, and regulatory violations of the general industry safety orders with proposed civil penalties totaling \$21,335. Based upon prehearing motions, including withdrawal of some of the citations by the Division, the total amount of proposed penalties for the remaining violations was reduced to \$3,185. Employer amended its appeal to challenge the reasonableness of the penalties. After a hearing the ALJ issued a decision which assessed a total of \$10 in civil penalties based upon the financial condition of Employer. The Board on its own motion took the ALJ's decision under reconsideration. The Board held that the ALJ's decision did not comport with the more recent Board decisions (*Dye & Wash*, *The Bumper Shop*, *Eagle Environmental*, and *DPS Plastering, Inc.*) which establish guidelines for penalty relief based upon financial hardship. Upon the Board's review of the entire record, the evidence did not establish grounds for penalty relief. The Board reversed the ALJ's decision as to the penalty relief and assessed civil penalties totaling \$3,185.

**ALL OTHER CASES (7) DO NOT YET HAVE A CASE DISPOSITION-
THEY ARE PENDING!**

OSH APPEALS BOARD HISTORICAL DATA BREAKDOWN OF 2005 RECONSIDERATIONS ON BOARDS OWN MOTION

CASE	ISSUE	VOTE			
		CT ¹	MS ²	GO ³	EO ⁴
SHEFFIELD FURNITURE 2-23-05	FINANCIAL HARDSHIP APPLICATION	Y	Y	Y	
KA BINE 3-8-05	INJURY REPORTING PENALTY ASSESSMENT	Y	Y	Y	
MEDALLION IND. 3-8-05	FINANCIAL HARDSHIP APPLICATION	Y	N	Y	
STOCKTON TRI-IND. 3-8-05	FINANCIAL HARDSHIP APPLICATION	Y	N	Y	
JA CON CONST. SYS. 3-22-05	EMPLOYEE EXPOSURE REQUIREMENT	Y	Y*	--	Y
		*VOTED FOR RECON 4-19			
E.L. YEAGER CONST. 4-19-05	SECONDARY RESTRAINT SYSTEM REQ.	Y	Y*	--	Y
		*VOTED FOR RECON 5-10			
SUN VALLEY SKYLIGHTS 5-17-05	FINANCIAL HARDSHIP APPLICATION	Y	Y	--	
	INJURY REPORTING PENALTY ASSESSMENT				
TOTAL	2 OUT OF 4 FINANCIAL HARDSHIP UNANIMOUS VOTES OTHER 2 FINANCIAL HARDSHIP WERE UNANIMOUS WHEN EMPLOYER PETITIONED FOR RECONSIDERATION ON SAME CASE				

¹ CT= MANAGEMENT MEMBER

² MS=LABOR MEMBER

³ G= GENERAL PUBLIC MEMBER-TERM ENDED 3-15-05

⁴ E= EXECUTIVE OFFICER AUTHORIZED TO VOTE

OSH APPEALS BOARD HISTORICAL DATA

AUTHORIZATION OF EXECUTIVE OFFICER AS DEPUTY APPEALS BOARD MEMBER

DATE	WHO AUTHORIZED	REASON	TYPE	TIME
11-83 THRU 3-84	CHAIR BOWERS	VACANCY	BLANKET ¹	4 MO.
03-00 THRU 4-00	CHAIR GAZDECKI	VACANCY	BLANKET	1 MO.
07-00 THRU 10-04	ACTING CHAIR DUPLISSEA & MEMBER SAUNDERS	VACANCY + ABSENCE ²	BLANKET	4 YR./3 MO.
10-03-00	ACTING CHAIR DUPLISSEA	VACANCY + RECUSAL	DECISION ³	1 CASE
11-07-00	ACTING CHAIR DUPLISSEA	VACANCY + RECUSAL	PET FOR RECON	1 CASE
01-09-01 & 01-23-01	ACTING CHAIR DUPLISSEA	VACANCY + RECUSAL	DEC AFT RECON ⁴	1 CASE
03-13-01 THRU 10-26-04	ACTING CHAIR DUPLISSEA & MEMBER SAUNDERS	VACANCY	BLANKET	3 YR./7 MO.
01-15-02	MEMBER O'HARA	ABSENCE	1 MTG ONLY	1 MTG
01-29-02	MEMBER O'HARA	ABSENCE	1 MTG ONLY	1 MTG
03-19-02	ACTING CHAIR SAUNDERS	VACANCY + RECUSAL	DEC AFT RECON	1 CASE
03-22-05	CHAIR TRAEGER	VACANCY	DEC & ORDERS	ALL DEC/ORD
04-19-05	CHAIR TRAEGER	VACANCY	DEC	ALL DEC
05-24-05	CHAIR TRAEGER	VACANCY + RECUSAL	PET FOR RECON	1 CASE

¹ BLANKET AUTHORIZATION MEANS THE EXECUTIVE OFFICER WAS AUTHORIZED TO VOTE UNTIL A NEW MEMBER WAS APPOINTED

² TWO VOTES ARE REQUIRED: VACANCY + ABSENCE OR RECUSAL CREATES THE NEED TO AUTHORIZE THE EXECUTIVE OFFICER FOR A SECOND

VOTE

³ THE BOARD LOOSES JURISDICTION OVER DECISIONS, PETITIONS FOR RECONSIDERATION, & ORDERS IF IT DOES NOT ACT WITHIN 30 DAYS

⁴ THE BOARD HAS AN INDEFINITE TIME TO ACT ON DEC AFTER RECON-IT. THERE IS NO DEADLINE

EXCERPTS FROM OSH APPEALS BOARD MINUTES

March 7, 2000 - One Board member seat was **vacant**. Chairman Gazdecki's term was near its end. At the Board meeting on this date, under "Chairman's Report", the Board took the following:

"ACTION: The Chairman's term of office expires March 15, 2000 unless he is re-appointed. The Chairman designated Board Member Duplissea, acting Chairman and *Executive Officer Janet Eagan, Deputy Board Member in Gazdecki's absence, until a new Member is appointed.* The Board will finalize plans to continue normal operations after Chairman Gazdecki's departure at its 3/14/00 meeting." [Emphasis added.]

March 14, 2000 - One Board member seat was **vacant**. Chairman Gazdecki's term was near its end. At the Board meeting on this date, under "Staff Reports," the Board took the following:

"ACTION: ACC Murray thanked the Chairman . . . *He also presented a legal memorandum setting forth Chairman Gazdecki's authority to name Member Duplissea, Acting Chairman in his absence and the Executive Officer as Deputy Member of the Board.*" [Emphasis added.]

March 28, 2000 - One Board member seat was **vacant**. One seat had been filled and the Member (Marcy Saunders) was sworn in on March 18, 2000, but she would not be attending her first meeting until mid April. Bill Duplissea was the Acting Chair. The Board minutes for this meeting state:

"Janet M. Eagan, Executive Officer & Deputy Member (LC Section 149)." . . .

"ACTION: Marcy Saunders, new OSHAB labor Member, was sworn in 3/18/00. Her term runs through 1/15/2003. Her first Board Meeting will be 4/13/00."

April 4, 2000 - Two Board member seats were vacant. Bill Duplissea was the Acting Chair and sole Board member. The Board minutes for this meeting state:

"Janet M. Eagan, Executive Officer & Deputy Member (LC Section 149)."

July 11, 2000 – One Board seat was vacant. The Minutes of the Board meeting on this date state:

“Per Labor Code section 149, Board Members Duplissea and Saunders authorized EO Eagan to act as a deputy board member in the event of either of *their absences*.” [Emphasis added.]

On at least two occasions, Executive Officer Eagan was deputized for absences of a Board member due at least in part to medical reasons (one Board seat was vacant), as below.

October 3, 2000 – One of the three Board seats was **vacant**. One of the two existing Members recused herself from considering a pending Decision of an administrative law judge – *Tutor-Saliba Corporation*, dockets 99-R1D3-3388 and 00-R1D3-110. At the Board meeting on this date, the Board took the following:

“ACTION: Board Member Saunders recused herself from review of this case. Board Approved by Member Duplissea and EO Eagan, serving as a Deputy Board Member.”

November 7, 2000 – One of the three Board member seats was **vacant**. Therefore, the Board took the following action to vote on a petition for reconsideration involving *Tutor Saliba Perini and Buckley & Company*, docket 99-R1D3-3388:

“ACTION: Board Member Saunders recused herself. Member Duplissea and Executive Officer Eagan, acting as Deputy Member, granted the petition for reconsideration.”

January 9, 2001 and January 23, 2001 – One of the three Board seats was **vacant**. A draft Decision After Reconsideration – *The Herrick Company*, docket 97-R1D1-1373, had to be approved, and one of the existing Board members recused himself (at the January 9, 2001 Board meeting from considering that draft Decision. At the January 23, 2001 Closed Session portion of the meeting, the Board minutes reflect the following regarding that draft:

“ACTION: This DAR was Approved for signatures by Board Member Saunders and Deputy Member Eagan.”

March 13, 2001 – One of the three Board seats was **vacant**, and Member Duplissee was near the end of his term. At the Board meeting, under “New Business”, the Board took the following:

“ACTION: Board member Duplissee moved to appoint Marcy Saunders, acting Chairman upon the expiration of Duplissee’s term of office. Motion carried. Member Duplissee moved *and it was seconded by Member Saunders to name Executive Officer Janet Eagan, a deputy Board Member until another Board Member is appointed by the Governor.* Motion carried.” [Emphasis added.]

January 15, 2002 – One Board seat was vacant. The Minutes of the Board meeting for this date state:

“Board Member O’Hara authorized the Executive Officer to sit as a Deputy Appeals Board Member per section 149 of the California Labor Code in the absence of Marcy Saunders.” [Emphasis added.]

January 29, 2002 – The Board minutes for this date state:

“Board Member O’Hara authorized the Executive Officer to sit as a Deputy Appeals Board Member per section 149 of the California Labor Code in the absence of Marcy Saunders.” [Emphasis added.]

March 19, 2002 – During the Board’s Closed Session meeting, a vote on a draft Decision After Reconsideration – *Tutor-Saliba Corporation*, docket 99-R1D3-3388 - could not be taken because one of the Board positions (employer representative’s) was **vacant**, and one of the existing two members recused herself. The Board’s minutes described the Board’s ensuing action as:

“ACTION: Because Acting Chair Saunders recused herself from review of this ALJ Decision on 10/3/200, the Board designated its Executive Officer as a Deputy Board Member per LC section 149. This DAR is Board approved for signatures by Member O’Hara and Deputy Member Eagan.”

**State of California
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD**

DATE: February 11, 2005

T0: All OSHA Appeals Board Staff
Sacramento and West Covina

SUBJECT: Board Meeting Binders

FROM: Candice Traeger, Chair Occupational Safety & Health Appeals Board

Board Meeting Binders

The Board meeting binders contain some sensitive and non-public information. In order to maintain the confidentiality of this material and to maintain the integrity of Board deliberations, the Board meeting binders should not be removed from the office. The Board meeting binders will be kept in a locked file cabinet when not in use especially when the office is closed.

If you need to review the Board meeting binders away from the office, please check them out with Janet Eagan or Candice Traeger. Even when checked out, the Board meeting binders should not be out of the office for more than a weekend unless special circumstances arise and then the request will be cleared through me first.



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Schwarzenegger
Secretary
Victoria L. Bradshaw

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Board

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Board

California
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Investment
Board

Department of
Industrial
Relations

Economic
Strategy
Panel

Employment
Development
Department

Employment
Training
Panel

CALIFORNIA Labor & Workforce Development Agency

106

November 1, 2004

FAXED
11-01-04

Ms. Candace Traeger, Chair
Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, CA 95833
Via Facsimile (916) 274-5786

Dear Ms. Traeger:

I wanted to take the opportunity to write to each of you to clearly express what the Labor and Workforce Development Agency (Labor Agency) expects of full-time paid Board Members. I believe most of our Board members and their staffs are dedicated public servants who work tirelessly to fulfill the missions of their respective Boards. While I respect the independence of the Board's decision-making process, Government Code section 15554 gives the authority to the Labor Agency to provide general supervision to all entities within the Agency and it is under that authority that I am sending this letter to each full-time paid Board member.

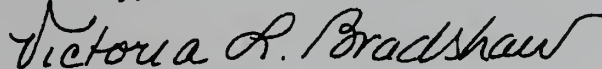
As the Secretary of the Labor Agency I expect, as does the public, that full-time paid Board members will devote their undivided energies and attention to the obligations of the Board on which they serve. Working full-time includes reporting to work for the entire workday at the state facility where the Board is headquartered. Any prior arrangement currently in effect that deviates from this is considered rescinded. If you are currently working at a location other than the state facility headquartering the Board in which you are a member, we expect you to begin working at the headquarters effective immediately, but no later than, Monday, November 8, 2004. In the future, any Board member seeking to work out of a state facility other than the Board's headquarters must have the prior approval of the Labor Agency and that decision will be decided based on the needs of the Board. As is state policy, the cost of commuting to and from an employee's worksite is borne by the employee.

Several of our Boards have backlogs in their caseloads. I'm certain you'll agree that absent or part-time Board members only exacerbate this problem, leaving the public without a timely remedy to its workplace safety and health problems. Not devoting one's undivided attention to a Board's business harms the public we've all sworn to serve, impairs the Board's effectiveness, and injures its credibility and integrity. In addition, absent and part-time Board members place an undue burden on the remaining Board members, who are upholding their responsibility to serve the public by devoting all of their efforts to the business of the Board.

I sincerely thank those Board members who have taken their responsibilities seriously and served the public faithfully since taking their oath of office. Your efforts are truly appreciated.

If you have any questions, please don't hesitate to call either Bob Dresser or myself.

Sincerely,

A handwritten signature in cursive script that reads "Victoria L. Bradshaw".

Victoria L. Bradshaw
Secretary

VLB:ly

cc: Robert Dresser, Labor Agency General Counsel
Janet Eagan, Occupational Safety and Health Appeals Board
Executive Officer

521-R

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